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THE  
EQUITY DRAFTSMAN,

BEING

A SELECTION OF  
FORMS OF PLEADINGS

IN

*Suits in Equity.*

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ORIGINALLY COMPILED BY

F. M. VAN HEYTHUYSEN, Esq.

BARRISTER AT LAW.

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*The Second Edition.*

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REVISED AND ENLARGED,

WITH NUMEROUS ADDITIONAL FORMS AND PRACTICAL NOTES.

By EDWARD HUGHES, Esq.

OF LINCOLN'S INN, BARRISTER AT LAW.

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# T A B L E

OF THE

TITLES, DIVISIONS, AND SUB-DIVISIONS,

CONTAINED IN THIS VOLUME.

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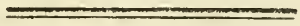
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\* XXXVII. Decree establishing a will with several codicils thereto, and directing the trusts to be carried into execution, except as to a direction in the will for the accumulation of the interest and dividends of the residuary personal estate and the rents of the real estate during the minority of any person or persons entitled thereto, which is declared to be too remote and void; a grandson of the testator, an infant, declared to be entitled to the devised estates for life, with remainder to his first and other sons in tail general; directions given as to an allowance for his maintenance; the testator's widow having made her election to take under the marriage settlement, declared to be barred of her dower; a trustee declared to be entitled to certain leasehold premises for his own benefit, and special directions given as to prospective and retrospective allowance to be made to him for his trouble. . . . . 404

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\* XLII. Decree on further directions in the original cause, and on the hearing of a supplemental suit; the plaintiffs in the latter suit declared to be entitled to the benefit of the proceedings in the original cause, and to prosecute the same; the accounts directed to be carried on from the foot of the former accounts, and the executor to be charged with a legacy retained by him and allowed in the Master's general report; the testator's real estate declared to be subject to the payment of his simple-contract debts, and the plaintiffs in the second suit declared to be creditors to the amount of a sum of stock sold out by the testator, and an account directed to be taken of the dividends which would have accrued due in case the same had not been sold out; construction of the will declared with regard to a devise of certain estates not exceeding £3000 a-year, as being to the separate use of a married

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woman for life ( she having for some years been separated from her husband), with remainder to her children in fee; the testator's shares in a Theatre directed to be sold, and the purchase-monies paid into the Bank. The costs of all parties to be taxed as between solicitor and client, and directions given out of what funds the same were to be paid.	
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# FORMS OF PLEADINGS

IN

## EQUITY.

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### CHAPTER IX.

#### ANSWERS.

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##### SECT. I.

##### THE TITLE (*a*).

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In Chancery.

The answer of A. B. defendant to the bill of complaint of C. D. complainant.

1. Where there is only one defendant to an original bill, in Chancery.

The answer of Sir J. S. C. knt. his Majesty's Attorney-General, one of the defendants to the bill of complaint of E. C. and R. his wife (late R. A. spinster) complainants.

2. Where his Majesty's Attorney-General is a defendant.

The answer of A. R. an infant under the age of twenty-one years by — her guardian, one of the defendants to the bill of complaint of J. C. and T. R., J. F. and J. L. complainants.

3. Where a defendant is an infant.

---

(*a*) If the title of an answer reflects on the plaintiff it is scandal, because the title cannot operate as an admission of the plaintiff's right, or work any conclusion. Therefore where an answer was entitled 'The several answer of John Peck esq. one of the defendants to the bill of complaint of Anna Baines, alias Green, assuming to herself the name of Anna Peck, as pretended wife of John Peck esq. deceased, and of Anna Maria Green, assuming to herself the name of Anna Maria Peck, as daughter of the said John Peck esq. deceased,' it was held scandalous and impertinent. *Peck v. Peck*, Mos. 45.

## In Chancery.

4. Where one of several defendants puts in her answer to an original and amended bill.

The answer of S. B. widow one of the defendants to the [original (*b*) and] amended bill of complaint of N. P. complainant.

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5. Where two of several defendants put in their answer to an original bill.

The joint and several answer of J. L. and T. R. two of the defendants to the bill of complaint of A. B. and C. D. complainants.

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6. Where several defendants join, and the christian names of some of them are mis-stated in the bill.

The joint and several answer of L. M., R. P. in the bill called E. P., J. R. in the bill called R. R., and R. T. defendants to the bill of complaint of R. M. complainant.

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7. Where exceptions have been taken to a former answer and the bill has also been amended.

The further answer of S. J. one of the defendants to the original bill, and her answer to the amended bill of complaint of S. T. and R. D. complainants.

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8. Where the plaintiff has died before some of the defendants have answered, and the bill has been subsequently amended.

The joint and several answer of A. B. C. D. and E. F. three of the defendants to the original and amended bill of complaint of N. P. deceased, and also their answer to the bill of revivor and amended bill of A. P. complainant.

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9. Where adult and infant defendants join in answering.

The joint and several answer of J. B. and M. his wife, H. F. E. F. W. F. J. P. and T. P., and of W. P. and J. P. infants under the age of twenty-one years by — their guardian, nine of the defendants to the bill of complaint of T. G. complainant.

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10. Where a supplemental answer is requisite.

The supplemental answer of W. P. T., J. S. and R. T. three of the defendants to the bill of complaint of the Rev. F. W. B. and C. E. complainants.

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(*b*) After amendment it is not necessary to notice the original bill in an answer or demurrer, although frequently done; the amended bill is considered as the original bill; *Smith v. Bryon*, 3 Madd. 428; see also 1 Ves. jun. 209 *a*, 2d edit.

## SECT. II.

## THE COMMENCEMENT.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors uncertainties and other imperfections (*d*) in the said complainant's said bill of complaint contained (*e*), for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith &c. [*The defendant must answer according to his knowledge remembrance information and belief.*]

1. Introduction or words of course preceding an answer by one defendant (*c*).

*Another form of commencement :*

This defendant reserving to himself all right of exception to the said bill of complaint, for answer thereto saith &c.

These defendants now and at all times hereafter saving and reserving to themselves and each of them all benefit &c. [*proceed as in form No. 1. supra, as far as the word 'as' and proceed thus:*] as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they these defendants severally answering say &c.

2. Introduction or words of course preceding the joint and several answer of several defendants.

*Or thus :*

These defendants reserving to themselves all right of exception to the said bill of complaint, for answer thereto say &c.

(*c*) In the case of an *infant* defendant, this clause is always omitted.

(*d*) *If the bill has been amended, insert the following form after the word 'imperfections:'*

'in the said complainant's [original and] amended bill of complaint contained' &c.

(*e*) *Where exceptions have been taken to the former answer, and the bill has also been amended, insert the following form after the word 'contained:'*

'for further answer to the said original bill and for answer to the said amended bill or unto so much and such parts thereof' &c.

The exceptions should be first answered, and afterwards the amendments as introduced in the bill.

## SECT. III.

## COMMON FORMS USED IN FRAMING ANSWERS.

1. *Where a defendant admits a statement.*

And this defendant further answering saith he hath been informed and believes it to be true that &c. *Or*, this defendant admits that &c.

2. *Where a defendant admits the statement of a written instrument.*

And this defendant further saith he hath been informed and believes it to be true that &c. but this defendant for greater certainty therein craves leave to refer to the said — when the same shall be produced.

3. *Where a defendant believes a statement may be true, but qualifies his admission of it not knowing the same of his own knowledge.*

And this defendant further answering saith he believes it to be true that at the time of the said testator's making his said will and at the time of his death the said testator's sister Jane the wife of — in the said bill named had such children as therein in that behalf named, but this defendant does not know the same of his own knowledge, nor can this defendant state as to his belief or otherwise whether she had or not any other children or child at such times or either of them.

*Or thus :*

And this defendant further saith he has never heard or been informed save by the said complainant's said bill whether &c. but this defendant believes that &c. as in the said bill is alleged.

4. *Where a defendant sets forth a deed, and alleges the payment by him of a sum of money.*

And this defendant saith that by a certain deed-poll or instrument in writing under the hands and seals of &c. and bearing date &c. the said — did in consideration of the sum of £ — to them paid by this defendant, the receipt &c., and which said sum was in fact so paid, remise, release, &c. As by such deed or instrument, to which

this defendant craves leave to refer when the same shall be produced, will appear.

*5. Where a defendant is entirely ignorant with regard to the statement in the bill.*

And this defendant further answering saith he knows not, and has not been informed save by the said complainant's said bill, and cannot set forth as to his belief or otherwise whether the said complainant has or not applied for or procured letters of administration of the goods chattels rights and credits of the said A. B. to be granted to her by and out of the proper or any or what Ecclesiastical Court, nor whether &c.

*Or thus :*

And this defendant further answering saith it may be true for any thing this defendant knows to the contrary that &c. but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning the same (*f*).

*6. Where one of two defendants of his own knowledge knows the statement in the bill to be true, and the other defendant does not know the same but believes the answer of his co-defendant.*

And this defendant M. M. further severally answering saith, and this defendant E. R. believes it to be true, that the said testator was not &c.

*7. Where two defendants admit the happening of an event but cannot state when it happened.*

And these defendants severally admit &c. but when in particular these defendants or either of them to the knowledge or belief of the other of them do not know, and cannot set forth as to their information and belief or otherwise.

*8. Where several defendants join, and are all ignorant of the allegations in the bill.*

And these defendants further severally say that they or any or either of them to the knowledge or belief of the others or other of them do not know, and have never been informed save by the said complainant's bill, and cannot set forth as to their belief or otherwise whether &c.

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(*f*) See *Amhurst v. King*, 2 Sim. & Stu. 183.

9. *Where one of two defendants denies the allegation in the bill, and the other defendant believes such denial to be true.*

And this defendant M. M. further severally answering saith she denies, and this defendant E. R. believes such denial to be true (g), that the said J. S. M. was then incapable of understanding the said codicil, but saith that he fully knew &c.

10. *Where two defendants join in denying the allegations in the bill.*

And these defendants further severally say that they these defendants did not nor did either of them to the knowledge or belief of the other of them, nor did the said J. and H. or several or any or either of the members of the said firm to the knowledge or belief of these defendants, a short time or at any time before &c.

11. *Where a schedule of deeds is required to be set forth.*

And this defendant further saith he hath in the schedule to this his answer annexed or under-written, and which he prays may be taken as part thereof, set forth according to the best and utmost of his knowledge remembrance information and belief, a full true and particular list or schedule of all deeds &c., and this defendant is ready and willing to produce and leave the same in the hands of his clerk in court for the usual purposes.

12. *Where an account of rents, or monies received, or paid, is required to be set forth by several defendants.*

And these defendants further severally answering say, they have in the [first] schedule to this their answer annexed or under-written, and which they pray may be taken as part thereof, set forth according to the best and utmost of their several and respective knowledge remembrance information and belief, a full true and particular account of all and every sum and sums of money &c. [Or, if an account required as to real estates, thus: a full true and just rental and particular of all and singular the real estates &c.]

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(g) See *Walker v. Norton*, Hardr. 165.



## SECT. IV.

## THE CONCLUSION.

And this defendant denies all and all manner of unlawful combination and confederacy (*h*) wherewith he is by the said bill charged, without this, that there is any other matter cause or thing in the said complainant's said bill of complaint contained (*i*) material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Denial of unlawful combination;  
General traverse.

(*h*) An answer to a charge of unlawful combination cannot be compelled, and a charge of lawful combination ought to be specific to render it material, as it has been determined that a general charge of combination need not be answered, see *Oliver v. Haywood*, 1 Anstr. 82; Ld. Red. Tr. Pl. p. 41, 4th edit.

(*i*) It is the universal practice to add by way of conclusion a general traverse or denial of all the matters in the bill, Ld. Rd. Tr. Pl. p. 314; this is said to have obtained when the practice was for the defendant merely to set forth his case, without answering every clause in the bill, see *Anon. Ca.* 2 P. Wms. 86, where a motion was made to suppress an answer as irregular or improper, the general traverse at the end being omitted, and on the ground that without this traverse there was no issue joined, but the motion was refused.

In the case of an *infant*, the denial of combination and the traverse at the conclusion are omitted, as he is considered incapable of the combination charged in the bill, and his answer cannot be excepted to for insufficiency; Ld. Red. Tr. Pl. p. 314.

## SECT. V.

## FORMS OF ANSWERS.

A defendant is not bound to confine himself to an answer to the interrogatories in the bill, but may state circumstances in his defence; if the answer goes on to state matter not material to the defendant's case, it will be deemed impertinent (1), but if it relates to the subject the court will not look critically into its materiality, for though not material according to the statements in the bill, it may become so by evidence; the party must shew to make it impertinent, that it never can have any relation to the subject of the suit (2).

If a general question be asked, and a particular one also which is included in the general one, the defendant must answer the particular as well as the general question (3). Specific charges in the bill must be answered particularly and precisely, therefore a general answer though it may include an answer to a particular inquiry is insufficient (4). An answer also must not be argumentative, but there must be positive averment (5). If the discovery sought be not material, the defendant may object to it by answer, and the practice of the Masters is to disallow exceptions where the questions are quite immaterial (6).

In an answer to a bill for an account, it is not sufficient for the defendant to refuse to give information further than to enable the plaintiff to go into the Master's office, the plaintiff has a right to have by the answer connecting itself with books and accounts referred to as part of the answer, the fullest information defendant can give him (7). If a bill requires an admission of assets, or that the defendant may set out an account, if the defendant admits assets

(1) Ld. Red. Tr. Pl. p. 313, 4th edit.; 2 Madd. Ch. Pr. 353, 5.

(2) *Ramsden v. Cass*, cited 2 Madd. Ch. Pr. 276.

(3) *Prout v. Underwood*, 2 Cox, 135.

(4) *Wharton v. Wharton*, 1 Sim. & Stu. 235, 6; *Hepburn v. Durand*, 1 Bro. Ch. Ca. 502.

(5) *Faulder v. Stuart*, 11 Ves. 303.

(6) *Agar v. Regent's Canal Company*, Coop. R. 215; and see the cases referred to in note (q), Ld. Red. Tr. Pl. p. 316, 4th ed.

(7) *White v. Williams*, 3 Ves. 193, 4.

he is not obliged to set out the account (8). Where in an answer of an executor to a bill containing the usual interrogatories for an account of the personal estate and what it sold for &c. every particular article and the price at which it sold was set forth in a schedule, it was held impertinent (9). If pertinence and impertinence be so mixed that they cannot be separated, the whole is impertinent. Needless prolixity is itself impertinence although the matter should be relevant; all that is required in an answer is, that the defendant should fairly and pertinently set forth so much of the instrument or document he may be asked respecting, as is sufficient to satisfy the object and inquiry of the plaintiff's charge and interrogatory, but he must not wantonly incumber the record beyond that (10). But in *Clissold v. Powell* (11), Sir John Leach, Vice Chancellor held, that if an instrument be required by the bill to be set forth, it is not impertinent to set forth the whole of it, for if a defendant takes on himself to state only the substantial part of the instrument, and an exception is taken because he has not set forth the substantial part, the court would be unable to decide what was the substantial part.

Where a discovery is sought of a correspondence, if the defendants set forth extracts of letters and swear that those are the only parts of the correspondence upon the subject, it is sufficient (12). When a short description of letters is required, it is impertinent to state the short *contents* of the letters (13).

If the answer *misnames* the plaintiff it is not considered as an answer, and will be ordered to be taken off the file (14). So if the answer purports to be an answer to the bill of *five* complainants only, when there are *six*, it will be ordered to be taken off the file (15).

(8) Cooper R. 215.

(9) *Beaumont v. Beaumont*, 5 Madd. 51. See also *Norway v. Rowe*, 1 Mer. 355; *Parker v. Fairlie*, 1 Sim. & Stu. 295; S. C. on appeal, 1 Turn. & Russ. 362.

(10) *King v. Teale*, 7 Pri. 280; in this case the answer was held impertinent in setting out at too full length a warrant of attorney to confess judgment and the defeazance, although the statement thereof in the bill was very incorrect; and see *Slack v. Evans*, before Lord Chancellor Eldon, cited 7 Pri. 278; Beames's Orders in Ch. p. 70 & 165.

(11) Cited as an *Anon. Ca.* 2 Madd. Ch. Pr. 355.

(12) *Campbell v. French*, 1 Austr. 58.

(13) — v. *De Tastet*, cited 2 Madd. Ch. Pr. 276.

(14) *Griffith v. Wood*, 11 Ves. 62.

(15) *Cope v. Parry*, 1 Madd. R. 83. So for other mistakes in the title; *Pieters v. Thompson*, Coop. R. 249; *White v. Godbold*, 1 Madd. R. 269.

A defendant will be held to an offer or submission in his answer, though the circumstances of the case were varied from what they were at the time the answer was put in (16).

If the matter of an answer be material and relevant to the justice of the case, whatever be the nature of it, it is not to be considered scandalous (17).

A trustee or incumbrancer interested only in part, (so also an heir at law,) always answers so much of the bill as applies to him, and need not answer the rest of it (18).

A defendant is not bound to answer interrogatories not supported by substantive allegations in the bill; but if he does answer, and the plaintiff replies to the answer, it is put in issue properly (19).

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\* I. *Usual answer of an Attorney-General* (20).

(For the title, see form No. 2. p. 1.)

This defendant answering saith that he is a stranger to the several matters and things in the said complainant's said bill of complaint contained; And this defendant further saith that he claims such rights and interests under &c. [*the will of R. S. deceased in the said bill stated*] for and on behalf of his Majesty as this honorable court shall be of opinion that his Majesty is justly entitled to.

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(16) *Holford v. Burnell*, 1 Vern. 448; *sed quare*, if the bill is afterwards amended; see 1 Ves. jun. 209 a, 2d edit.; 6 Ves. 555; 2 Madd. Ch. Pr. 370.

(17) *Coffin v. Cooper*, 6 Ves. 514; *Smith v. Reynolds*, Mos. 70.

(18) *Cooper R.* 215.

(19) *Attorney-General v. Whorwood*, 1 Ves. sen. 534, 8.

(20) The Attorney-General may, in his discretion, put in an answer, or refuse to answer; but if he refuses to put in any answer, the bill may be taken *pro confesso*. No process of contempt can go against the Attorney-General, nor can exceptions be taken to an answer put in by him. Where the Attorney-General puts in the common answer he may afterwards move to withdraw it and put in a new answer; 2 Madd. Ch. Pr. 335; 1 Fowl. Ex. Pr. 401.

The introductory words of course and the general conclusion of an answer (see sections 2 and 4, antea,) are unnecessary in the answer of an Attorney-General; although in the forms of answers by the Attorney-General, inserted in the former edition of this work, the commencement of those clauses is inserted.

II. *Answer of the Attorney-General where the plaintiff was alleged to be illegitimate.*

(For the title, see form No. 2. p. 1.)

This defendant (21) saving and reserving to himself on behalf of his Majesty now and at all times &c., answering saith that he is a stranger to all and singular the matters and things in the said complainant's bill of complaint contained, and therefore leaves the said complainant to make such proof thereof as he shall be able; And this defendant further answering saith that he insists on behalf of his Majesty on all such right title and interest in the premises in the said bill of complaint mentioned as his said Majesty shall appear to have therein, and this defendant humbly submits the same to the judgment order and direction of this honorable court, and also humbly prays that this honorable court will take care of his Majesty's right and interest in the premises. And this defendant denies &c. Without that &c.

J. M.

III. *The answer of the Attorney-General where a testator died without leaving an heir at law.*

(For the title, see form No. 2. p. 1.)

This defendant (22) now &c. answering saith it may be true for any thing this defendant knows to the contrary that I. T. A. in the complainant's bill named was seised in fee simple of such real estates as therein mentioned, and that he died at or about the time in the said bill in that behalf mentioned without leaving an heir at law, but whether the said I. T. A. duly made and published such or any other last will and testament as in the said bill mentioned, or whether if he so did he the said I. T. A. was of sound mind memory and understanding at the time of making and publishing the same, or whether the same was duly executed and attested &c., or whether the said complainant is so or otherwise entitled to the said estates as in the said bill in that behalf mentioned, this defendant

(21) See note (20), antea, p. 10.

(22) See note (20), antea, p. 10.

being an entire stranger to the several matters aforesaid cannot set forth, but leaves the said complainant to such proof thereof as he shall be advised to produce; And this defendant on behalf of his Majesty insists that if the said I. T. A. died without leaving any heir at law and without duly executing his will and testament in writing in such manner as by law is required for devising real estates, in that case his Majesty has become entitled by escheat to all the estates of which the said I. T. A. died seised.

W. A.

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IV. *Answer of the Attorney-General insisting on a title by escheat in the crown, in case a testator died without leaving an heir at law, and without having made a will valid to pass real estate.*

(For the title, see form No. 3. p. 1.)

This defendant (23) saving &c. answereth and saith that he is a stranger to all and singular the matters and things in the complainant's said bill of complaint contained, and submitteth the same to the judgment of this honorable court; but insists on his Majesty's behalf that in case it shall appear that Sir D. D. late of &c. deceased in the complainant's bill named, died without leaving any person or persons a subject or subjects of Great Britain his heir or heirs at law, and without having duly made and published his will and testament in the presence of three credible witnesses and with all the solemnities of law requisite to devise or pass real estate at the time of his being of sound and disposing mind memory and understanding, that then and in such case his Majesty is well entitled by escheat to all and singular the freehold messuages lands tenements and hereditaments of which the said Sir D. D. died seised or entitled in fee simple; And therefore this defendant prays that this court will take care of such right and interest if any as shall appear to be in his Majesty. Without that &c.

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(23) See note (20), antea, p. 10.

\* V. *Answer of the trustees and executors under the will of a testator who had contracted for the purchase of an estate, to a bill for specific performance; the defendants insisting that the original agreement had been abandoned on account of the defects of title, and the delay which had taken place, and also of the deterioration in value of the estate; but also insisting (in case the opinion of the court should be against them,) upon the benefit of a subsequent agreement for an abatement in price according to the terms expressed in a letter written by the purchaser.*

The joint and several answer of T. S. and A. M. two of the defendants to the original bill of complaint and bill of revivor of J. N. widow and T. N. complainants, and the joint and several answer of the same defendants to the bill of revivor of the said T. N.

These defendants &c. [*see form No. 2. antea, p. 3.*] answer and say they do not know and cannot set forth as to their belief or otherwise whether the said complainants in the said original bill named or either of them were or was at any time seised possessed of or well entitled to such freehold and leasehold estates as in the said bill mentioned for such estates as therein mentioned, or what estates or interests in particular they or either or them had or has therein respectively, but these defendants believe that the said complainants in the original bill or one of them were or was in possession of such estates and claimed such interest therein as are mentioned in the said bill; And these defendants say they believe it to be true that the said J. N. deceased and the said complainant T. N. were desirous of selling the said freehold and leasehold estates, [*and that they offered the same for sale subject to certain particulars &c., (but for their greater certainty, &c. refer thereto,) and that they were put up to sale but not sold, &c., and that the said J. N. and T. N. authorized R. W. to sell the estates by private contract;*] And that D. M. in the said bill named and now deceased applied to and agreed with the said R. W. as the agent of the said J. N. and the said complainant T. N. for the purchase of the said estate and premises at or for the price or sum of £8000, but whether or not subject to such terms and stipulations as in the said bill stated, or what were the terms

Do not know whether the plaintiffs were seised of such estates as in the bill mentioned, but believe that they were in possession thereof, and claimed such interest therein as in the bill stated;

Believe that they were desirous to sell,

and that D. M. the defendants' testator agreed with the plaintiff's agent to purchase the same for £8000, but the terms of such agreement

they are unable to state, except as appears from a letter;

but say that no agreement in writing was ever signed.

Do not know whether D. M. had heard of the intended sale by auction;

nor whether any printed particulars were delivered to or perceived by him.

Admit that R. W. was the solicitor and agent of D. M. and the plaintiffs;

Believe that R. W. prepared an abstract of the plaintiff's title, which they believe was very imperfect;

that he sent the same to counsel to peruse on behalf of D. M.,

and that numerous objections were made.

Admit certain letters were sent by D. M. to R. W.

Do not know whether a letter was sent by D. M. in reply to a communication from R. W.

of such agreement these defendants are unable save as herein-after mentioned to set forth, and except that it appears from a letter of the said D. M. that the purchase was to be completed on the 14th of February 1821; but these defendants say that no agreement in writing was ever made or signed by the said J. N. and the said complainant, or by the said R. W. on their behalf, or by the said D. M. concerning the purchase of the said estate and premises or any part thereof; And these defendants severally say they do not know and have no information whether the said D. M. had or not previously heard of the intended sale by auction, or that the said estate and premises were not sold, though they think it probable that he had heard of such intended sale, and that the same had not been effected; And these defendants further say they do not know and cannot set forth as to their belief or otherwise whether any printed particulars or conditions of the sale hereinbefore mentioned or any other sales were or not during the treaty for the said purchase or at any other time delivered to the said D. M. by the said R. W. or by any other person, nor whether the said D. M. did or not peruse and consider any particulars and conditions of sale; And these defendants further say they admit it to be true that the said R. W. was the solicitor and agent employed as well by the said D. M. as by the said J. N. and the said complainant T. N. in and about the said purchase; And these defendants severally further say they believe it to be true that the said R. W. did as the solicitor or agent of the said J. N. and of the said complainant T. N. prepare at their expense an abstract or what purported to be an abstract of their title to the said estate and premises, but which as these defendants believe was very imperfect and inaccurate; and that the said R. W. shortly afterwards sent the said abstract to R. G. B. in the same bill mentioned to peruse and advise thereon on behalf of the said D. M., and that the said R. G. B. made numerous objections and inquiries respecting the title of the said estate and premises; and that the said objections and inquiries required considerable research in order to obviate and answer them; And these defendants further say they believe it to be true that the said D. M. wrote and sent to the said R. W. such letters &c. &c. as in the said bill stated, but for their greater certainty as to the said letters these defendants crave leave to refer to the same when produced; And these defendants severally further say they do not know and cannot set forth as to their belief or otherwise whether the said letter in the said bill mentioned to bear date the 7th day of February 1821 or whether any other letter was or not sent by



the said D. M. in reply to such communication of the said R. W. as in the said bill mentioned, save as appears from such letter; And these defendants further say they have been informed and believe it to be true that the said estate and premises were by such indentures of lease and release as in the said bill mentioned together with other freehold hereditaments conveyed to the said T. P. in mortgage in such manner as in the said bill mentioned, and that the estate and interest of the said T. P. in the said mortgaged premises has become absolute at law, but for their greater certainty as to the said indentures these defendants crave leave to refer to the same when produced; And these defendants further say they believe it to be true that the said R. W. did upon such occasion as in the said bill mentioned request Messrs. W. and H. therein named to manage the business relating to the said purchase, and that the said Messrs. W. and H. were the solicitors of the said T. P. and complied with such request as aforesaid, and that the said Mr. H. had several interviews with the said R. G. B., and that in consequence of the requisitions of the said R. G. B. the said Mr. H. found it necessary to prepare and did prepare at the expense of the said J. N. and of the said complainant T. N. a new set of abstracts of their title to the said freehold and leasehold estates, and that the said Mr. H. laid the same before the said R. G. B. together with such pedigree certificates and other documents as in the said bill mentioned; And these defendants severally further say they believe it to be true that the said D. M. did deposit in such bank as in the said bill is mentioned the sum of £8000 the purchase-money agreed to be paid by the said D. M. for the said estate and premises, but whether or not such proposal as in the said bill stated or any other proposals whatever was or were ever made by the said Mr. H. to the said D. M., and whether or not the said D. M. declined according to such proposal or proposals, these defendants are unable to set forth as to their belief or otherwise; And these defendants severally further say they do not know and cannot set forth as to their belief or otherwise whether or not the said Mr. H. was in daily expectation of receiving such draft as in the said bill mentioned or any other draft from the said R. G. B. or any other person, but these defendants say they believe that the said Mr. H. did apply to the said D. M. to advance the ad valorem duty on the intended conveyance, and that the ad valorem duty amounted to the sum of £90, and was accordingly on the — day of — paid by the said D. M. to the said Mr. H., but whether such application by the said Mr. H. was in consequence of such expectation as aforesaid these defendants

Believe that the estate was conveyed in mortgage to T. P., and has become absolute at law in him.

Believe that R. W. requested W. and H. to manage the business relating to the said purchase;

that a new set of abstracts was prepared by Mr. H., with the documentary evidence;

And that D. M. deposited his purchase-money in a bank, but that the defendants know nothing as to the proposal stated in the bill;

Nor do they know whether Mr. H. was in expectation of receiving the draft from counsel;

But believe that he applied to D. M. to advance the ad valorem duty, which D. M. accordingly did.

are unable to set forth as to their belief or otherwise; And these defendants severally say they do not know and cannot set forth as to their belief or otherwise [ *whether W. returned to L., and H. resigned the business and paid over the £90* ]; And these defendants further say they do not know and cannot set forth as to their belief or otherwise whether or not the principal or any objections which had arisen on the title of the said J. N. and of the said complainant T. N. were ever removed or answered to the satisfaction of the said R. G. B., but these defendants say they believe it to be true that at or about such time as in the said bill mentioned the draft of the conveyance of the said estate and premises was received by the said R.W. from the said R. G. B. with some very important requisitions as to the title which had not been then supplied, and that it was the opinion of the said R. G. B. that a good title could not be made unless the different objections which he had discovered in and to the title were well and satisfactorily answered, and that the draft of the intended conveyance was sent by the said R. G. B. under the expectation that the said R.W. as the agent for the vendors would be able to supply such defects, but without any intention that the said conveyance should be executed by any of the parties until the objections which had been raised by him were satisfactorily removed; And these defendants say they do not know and cannot set forth as to their belief or otherwise whether the said R.W. or any other person by his order or direction did or not submit such last-mentioned remarks and requisitions or any of them to the said D.M. for his consideration, or whether the said D.M. did or not consider the same, but these defendants say they do not believe that the said D.M. ever waived all or any of the objections to the title which had been raised by the said R. G. B., or that he accepted the title of the said J. N. or of the said complainant T. N. or either of them, or that he testified his approbation of the said or any other draft of conveyance; And these defendants say that it is very improbable that being himself no lawyer, and having consulted a conveyancer for the purpose of having a safe and marketable title to the said estate and premises, the said D. M. should on his own responsibility have waived objections which by the said R. G. B. were considered material and necessary, to the title of the said estate and premises so agreed to be purchased by him; And these defendants say they do not know and cannot set forth as to their belief or otherwise whether the said R.W. or any other person by his order or direction did or not leave the said or any other draft with the said Mr. H. or with any other person in his service or employ, or whether the said Mr. H. did or not approve thereof or

Do not know whether any objections to the title were removed to the satisfaction of counsel;

But believe that the draft conveyance was received from him by R.W.;

And that it was the opinion of counsel that a good title could not be made, unless the objections were satisfactorily answered, and that the draft was sent in the expectation that R.W. would be able to supply the defects, but that it was not intended to be executed until the objections were removed.

Do not know whether the requisitions made by counsel were submitted to D.M. but believe that he never waived any objections to the title; Reasons for such belief.

Do not know whether R.W. left the draft with Mr. H. nor whether he approved thereof on behalf of T. P.

behalf of the said T. P. the mortgagee, or whether the said draft was or not approved of by all such other persons as are in the said bill mentioned or any of them; And these defendants further say they believe it to be true that such indentures of lease and release and assignment of such respective dates and made between such persons as in the said bill mentioned, were engrossed from the said draft of conveyance, and executed by such several persons as in the said bill stated, and that the said T. P. married about such time as in the said bill stated, and that from such circumstances as therein mentioned, the said Mr. H. had reason to doubt his sanity, and that he thereupon thought it advisable to defer procuring the execution of the said indentures by the said T. P. until he thought that the said T. P. was competent to execute the same, and that shortly afterwards a commission issued to inquire of the lunacy of the said T. P., and that there was considerable difference of opinion among the jurors, and that the said T. P. was returned by twelve of the said jurors to be a lunatic, in such manner as in the said bill stated, and that such return has since been declared insufficient by this honorable court; And these defendants further say they believe it to be true that such other commission as in the said bill mentioned was issued to inquire of the lunacy of the said T. P., and that the inquisition found in such manner as in the said bill mentioned, and that several proceedings have taken place in the matter of the said lunacy respecting the custody of the estate of the said T. P.; And these defendants severally say they believe that on the 14th of February 1821 the said D. M. was prepared to pay his purchase-money for the said estate, and offered to pay the same upon the sale being completed on behalf of the vendors, and that they being unable to complete, the said D. M. by the advice of the said R. W. deposited his money in the bank mentioned in the bill, for security, where the same lay without producing interest, it being understood that the purchase would be immediately completed, but that nevertheless in the month of August 1821 the vendors were not in a situation to complete the same; And these defendants further say that in the said month of August the difficulties in the completion of the title to the said estate were as these defendants believe still unremoved, and the property had become greatly deteriorated since the said D. M. had agreed to purchase the same, and that the said D. M. was put to very great inconvenience by the delay on the part of the vendors in completing the sale, not only by the loss of interest on the purchase-money, but by losing the opportunity of improving the property which he might have done if the sale had been completed, and also by his in-

Believe that certain indentures of lease and release were engrossed and executed by such persons as in the bill stated;

And that T. P. married, and that Mr. H. had reason to doubt the sanity of T. P. and deferred procuring the execution of the deeds by him.

That a commission of lunacy issued against T. P.,

And that the return made by the jurors was afterwards declared insufficient.

Believe that another commission issued, and that the inquisition found as in the bill stated.

Believe that on 14th February, 1821, D. M. was prepared to pay his purchase-money;

And by the advice of R. W. deposited the same in a bank, where it lay without producing interest, on the understanding that the purchase was to be immediately completed, but that in August the vendors were not in a situation to complete.

That the difficulties were then unremoved, and the property had become greatly deteriorated, and

that D. M. was put to great inconvenience by the delay, and stating the circumstances under which the defendants believe that D. M. wrote to R.W. the letter stated by the defendants.

Believe from the letter next stated that D. M. had been assured that the sale should be immediately completed.

Believe that the vendors were satisfied that they could not compel a specific performance, and were willing to make a new contract or to modify the old one, and entered into a negotiation for that purpose; And that D. M. being urged as to the deduction he required, wrote to R.W. the letter next stated.

That several letters passed between D. M. and R. W. respecting the proposed arrangement;

ability to grant a lease of the property to the tenant in possession, who was willing to have taken a lease, but being unable to obtain the same quitted the estate, and under the circumstances aforesaid these defendants believe that the said D. M. on the 1st of August 1821 wrote and sent to the said R.W. as solicitor for the vendors, a letter to the purport or effect following, (that is to say): “Dear Sir.—You can have no conception of the deterioration of the value of E. by the delay in making the conveyance for so long a period after what was agreed upon, and unless I can have a title by the 13th instant, I must give up all intention of purchasing” &c. &c. As in and by such letter if produced to this honorable court would appear; And these defendants further say they believe from the letter next hereinafter stated, that the said D. M. had been assured that the said sale should be immediately completed on the part of the vendors, and that he therefore waited for some time in expectation thereof, but that such expectation not being fulfilled, he wrote and sent another letter to the said R.W. bearing date on or about the 25th of September 1821, in the words or to the purport or effect following, (that is to say): [*being a letter which communicated the difficulties in the way of completion, and stated the loss which he was sustaining by getting no interest for his money &c. &c. and stating that if not completed he must give it up.*] As by such letter if produced would appear; And these defendants severally further say they believe that the vendors were satisfied that they were not in a situation to enforce against the said D. M. the performance of the said contract, and that they were willing therefore to make a new contract with him or to modify the old contract, and that they entered into a negotiation with him for that purpose, and that the said D. M. being urged as to the sum which he would think a reasonable deduction from the sum of £8000 which he had originally agreed to give for the said estate and premises, wrote and sent to the said R.W. a letter bearing date on or about the 1st of October 1821, in the words &c. [*being a letter, which from its language gave a colouring to the defence here set up; that a new treaty was on foot, and required the execution of an agreement, and proposing terms the same in substance as the memorandum hereinafter mentioned and required immediate possession; but if these terms were not complied with, that he relinquished all intention of purchasing.*] As by such letter &c. &c.; And these defendants say that several letters passed between the said D. M. and the said R.W. respecting the arrangement so proposed by the said D. M., and that after some discussion the said R.W. on behalf of the vendors and by the express authority of the said J. N., acceded to the terms so proposed

by the said D. M., and wrote and signed and sent to the said D. M. a letter dated the 17th of October 1821 declaring such acquiescence; And these defendants further say that the said R. W. at a meeting which took place at the house of the said D. M. and as the authorised agent of the said J. N. and of the said complainant, drew out a memorandum of the agreement to be entered into between the said D. M. and the said J. N. and the said complainants, according to the terms so arranged as aforesaid, the particulars whereof were as follows, (that is to say): “ £500 to be allowed to Mr. H. out of the purchase-money for the non-completion of the purchase;—that Mr. M. should be entitled to the interest of £7500 the remainder of the purchase-money from the 14th day of February 1821 till the time he takes possession of the estate or enters into the receipt of the rents, after the rate of 5 per cent.;—that Mr. N. shall be entitled to such interest as the purchase-money may have made in the bank, and also to the rent of the estate to be calculated from the 14th of February 1821 to the date of the agreement when entered into, from which time Mr. M. is to enter into possession and to receive the rents;—that Mrs. N. shall be entitled to such interest as the purchase-money shall hereafter make, until the sale can be completed, and the purchase-money shall either be invested in the bank or on government securities as Mr. M. and Mrs. N. may agree on.” As in and by such memorandum if produced would appear; And these defendants severally further say they believe that the said R. W. as solicitor for the vendors, undertook to prepare or to have prepared a formal agreement and declaration of trust by way of deed in conformity with the said memorandum, but that the same was not prepared for some time after such meeting took place as aforesaid, and that when prepared, it differed in most essential particulars from the memorandum on which it was to have been founded, and that under such circumstances the said D. M. refused to execute the same, and on or about the 5th day of November 1821 wrote and sent to the said R. W. a letter in words and to the effect following; (that is to say), “ Dear Sir.—I received your’s with draft agreement proposed to be executed, and began by making a short interlineation, but reading further I found the whole quite different from our agreement, which you will see by a perusal of my letters of the 1st, 10th, and 13th, all addressed to you; and with respect to having the title uncompleted for two years and then subjected to be annulled is most unreasonable, as it would bind me from either leasing for any length of years or improving the property, or by doing so, subjecting me to suffer great loss of interest and outlay, which are terms so different to our original agreement that I can see no possible

And that R. W. on behalf of the vendors acceded to the terms proposed, and wrote a letter declaring such acquiescence.

Say that R. W. at a meeting at D. M.’s house, drew out a memorandum of agreement of the terms arranged between the parties.

Believe that R. W. undertook to prepare a formal deed of declaration of trust in conformity with the said memorandum, but when prepared it differed in most essential particulars, and that D. M. refused to execute the same, and wrote to R. W. the letter next stated.

prospect with any safety to myself of ever accomplishing the purchase, I must therefore again declare myself off from so uncertain and hazardous an attempt to purchase E., as I have already expressed in my letters as above stated; indeed by what Mr. B. last says, it does not appear that Mrs. N. has any right to sell under any such incumbrances and uncertainties as she unfortunately labors under." As in and by such letter when &c.; And these defendants further answering say they do not know and cannot set forth as to their belief or otherwise save as hereinbefore mentioned, whether the said D. M. did or not inform the said R. W. to such effect as in the said bill mentioned, or whether he made any other communication of the like nature to the said R. W., or whether the said J. N. and the said T. N. or any other person ever made any such applications requests or offers to the said D. M. and the other defendants thereto as in the said bill mentioned; And these defendants say they do not know and cannot set forth as to their belief or otherwise, whether the said J. N. and the said complainant T. N. or either of them have been always or at any time anxious to procure such conveyance and assignment as in the said bill mentioned. [*Then followed answers to interrogatories relating to T. P. the mortgagee.*]

Say they are entirely ignorant as to whether D. M. made any communications to R. W. as in the bill stated or otherwise, and as to applications made to D. M. and the other defendants.

Submit whether D. M. did enter into a valid agreement for purchase.

Say they are entirely ignorant as to a lease held by one J. D. further than they believe that D. M. had treated with him as to his continuing tenant.

Do not believe that D. M. withdrew the £3000 out of the bank, but on the contrary believe that the same was in the bankers' hands at the time of their failure.

And these defendants submit to this honorable court whether the said D. M. did or not enter into a valid and binding agreement for the purchase of the said freehold and leasehold estates; And these defendants severally further say they do not know and cannot set forth as to their belief or otherwise, whether the lease under which J. D. in the said bill named held the whole or any part of the estate &c. [*as to whether D.'s lease was delivered to D. M. and whether he treated with him for a renewal,*] further than these defendants believe that the said D. M. before he abandoned the said purchase had entered into some treaty with the said J. D. for continuing him the tenant of the property in case the said D. M. became the purchaser thereof; And these defendants further answering say they believe it to be true &c. [*that D. M. agreed to take timber at a valuation, but they do not know whether according to particulars of sale and answering the interrogatories to this point.*] And these defendants severally further say they do not believe that the said D. M. did withdraw the said sum of £8000 out of such bank as in the said bill mentioned, and on the contrary these defendants believe that such money was lying in the hands of the said bankers in the month of — when they failed, and that a heavy loss was sustained by the said D. M. in consequence, and that the money produced no interest while the same lay in the hands of the said bankers; And these defendants further answering say they admit it to be true

that the said D. M. did duly make and publish his last will and testament in writing, executed and attested in such manner as to pass real estates by devise, of such date &c., and that the said will contained such devise &c., but for their greater certainty as to the said will and the contents thereof, these defendants crave leave to refer to the same or the probate thereof when produced, [*admission of testator's dying without revoking—proof,*] and that they have possessed themselves of the said testator's personal estate or some part thereof, for which in case this honorable court should be of opinion that the said complainant T. N. has any claim, then these defendants are ready to account to the extent of their several and respective receipts and payments in respect thereof, but whether such personal estate is much more than sufficient to pay and satisfy all the debts legacies and funeral expenses of the said testator these defendants not having yet obtained all the accounts of the persons to whom the said D. M. was indebted cannot set forth; And these defendants further say they believe it to be true that the said J. N. departed this life at or about such time as in the said bill mentioned, but whether or not she made and published her last will &c. or of any other date or to any other purport or effect, or whether the said J. N. did or not appoint such persons as in the said bill named executors of her said will, or whether she ever revoked her said will except so far as the same is revoked by the said codicil, or whether the executors in the said codicil named renounced the probate of the said will and codicil and declined to act in the trusts thereof, or whether the said complainant hath obtained such letters of administration as in the said bill mentioned to be granted to him by and out of such court as therein mentioned, and is now the legal personal representative of the said J. N. deceased, these defendants severally say they do not know and cannot set forth as to their belief or otherwise; And these defendants severally say they do not know and cannot set forth as to their belief or otherwise whether or not by such order of this honorable court as in the said bill mentioned the said M. A. has been appointed committee of the estate of the said T. P., or whether a grant thereof afterwards passed the great seal of Great Britain accordingly, or whether the said M. A. as such committee aforesaid, claims to be entitled to all the estate and interest of the said T. P. of and in the aforesaid mortgage and the hereditaments and premises included therein; And these defendants submit to this honorable court that under the circumstances hereinbefore mentioned, and inasmuch as if any such agreement as mentioned in the said bill was ever so made as to be binding upon the said D. M. which these defendants do not admit, the same was afterwards in the manner hereinbefore mentioned waived and

Admit D. M.'s will, and the probate thereof by the defendants,

And that they have possessed his personal estate for which they are ready to account, but are unable to state whether such personal estate is more than sufficient to pay all debts.

Admit the death of the plaintiff J. N. but not her will and codicil thereto, or that the executors renounced probate or that the plaintiff T. N. has obtained letters of administration.

Say they are ignorant whether M. A. has been appointed committee of the estate of T. P.,

or whether he claims the lunatic's interest in the mortgage security; and submit that as if any agreement was made binding upon D. M. the same was abandoned, the plaintiffs are not entitled to the relief prayed,

Or that if the defendants are bound to complete, then they insist upon the benefit of the second agreement, according to the terms of D. M.'s letter of the 1st October, 1821;

And say they are advised that the plaintiff cannot make a good title, and in the event of being compelled to purchase, they pray a reference to the Master to inquire into the title.

abandoned, the said complainants are not entitled to any such relief as is prayed by the said bill against these defendants; but if this honorable court should be of opinion that these defendants as representatives of the said D.M. are bound upon any terms to complete the said purchase, then these defendants insist upon the benefit of the agreement subsequently made between the said D. M. and the vendors, the terms of which are expressed in the said D. M.'s letter of the 1st of October 1821; And these defendants further say they are advised that the said complainant cannot make a good title to the estate and hereditaments hereinbefore mentioned, and in the event of their being compelled to purchase the said premises they pray a reference to one of the Masters of the court to inquire into such title; And these defendants deny &c. [*see sect. IV. antea, p. 7.*]

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\* VI. *Answer of one of three trustees for sale, defendants to a bill by a purchaser seeking to set aside the contract, the defendant insisting that although the incumbrancers on the estate are numerous, and that a recovery which had been previously suffered was in dispute in another suit, yet that the defendants are able to procure a good conveyance to be executed to the plaintiff, and that he ought to be compelled to complete his contract (24).*

[*Answer of defendant C. V.—For the form of title and commencement, refer to sect. I. and II. p. 1. and 3.*]

Saith that he and his co-defendants, being duly constituted trustees for sale, a treaty was entered into and an agreement concluded for sale of certain estates to the plaintiff;

*Saith* that defendant, together with M. A. T. and S. T. S. the two other defendants to the said bill, having been as they were advised, duly constituted and appointed trustees for the sale of the hereditaments and premises in the said bill mentioned, and believing that they had a good right and authority to sell the same, and that they could execute or procure to be executed a good and sufficient conveyance thereof in fee-simple to a purchaser, and being desirous therefore of executing their said trust, a treaty was accordingly in or about the month of July 1821 entered into between defendant's said co-trustees or one of them and the said plaintiff, and an agreement was afterwards concluded between them for the sale of the



said hereditaments and premises to the said plaintiff at or for the price or sum in the said bill mentioned; and the said agreement was thereupon reduced into writing, and defendant admits signed by the said M. A. T., S. T. S. and the said plaintiff, and was as defendant believes in the words and figures or to the purport and effect in the said bill mentioned, as far as the same is therein set forth, nevertheless defendant for his greater certainty craves leave to refer to the same when produced to this court;

And that the same was reduced into writing and signed, and was to the effect stated in the bill.

*Saith* that the said agreement so signed was sent to defendant for his approbation and signature, and defendant did accordingly approve of and sign the same subject only to a few marginal notes thereon by way of qualification on certain collateral points as to costs and the extent of the covenants to be entered into on the part of defendant and his co-trustees, as by the said agreement when produced, and to which defendant for his greater certainty refers, when produced, will more fully appear;

*Saith* that such agreement was sent to him for his signature, and which he accordingly signed.

*Saith* that except as aforesaid he did not personally act in such treaty of sale of the said premises to said plaintiff, such treaty having been carried on in the county of Y. by his co-trustees there, and defendant residing in London and not having interfered in the contract any further than by some previous correspondence with his co-trustees, and by testifying his approbation of and subsequently signing the contract, neither did defendant pretend or allege himself to be in the said month of July or at any other time seised of or otherwise well entitled for an estate of inheritance in fee-simple to the manor and other hereditaments in the said bill mentioned, or that he and the said other defendants could shew and make out a good clear marketable title to the said premises, or that they had good right and authority to sell the same, and could execute or procure to be executed a good and sufficient conveyance of said hereditaments free from all incumbrances except as in the said bill mentioned, or otherwise except as aforesaid;

*Saith* that he did not personally act in the treaty.

*Saith* that except as he is informed by the said bill he is wholly unable to set forth whether or not the said plaintiff was at the time in the said bill mentioned anxious to purchase a residence and estate in that part of the country where the said manor and other hereditaments were situate, or whether or not he relied upon such alleged statements as are in the said bill mentioned to have been made by this defendant's said co-trustees;

*Saith* that he is unable to state whether the plaintiff was anxious to purchase a residence, or whether he relied on the statements alleged in the bill.

*Denies* that he ever made any such statements to the said plaintiff;

*Denies* having made any such statements.

*Saith* that he believes it to be true that two parts of the said agreement hereinbefore mentioned were prepared, and that one of

*Believes* that two parts of

the agreement were prepared, and that one was taken by the defendants, but is unable to state whether the other was taken by the plaintiff.

Has been informed and believes that a full abstract was sent to the plaintiff, and that he has approved of the title.

Saith that except as he has been informed as to three abstracts being sent, he knows not whether a partial abstract only was delivered as stated in the bill.

Does not believe that any material deeds were omitted.

Believes that F. M. T. has in another suit endeavoured to impugn the validity of a recovery suffered of the estates sold, but believes that such recovery is valid.

such parts was taken and kept by defendant and his said co-trustees, and is now in their power, but whether or not defendant signed both parts of the said agreement he does not recollect, and except as he is informed by the said bill, is wholly unable to set forth as to his belief or otherwise whether the other part of said agreement was taken and kept by said plaintiff or is now in his possession;

*Saith* he does not know but has been informed and believes that a full true and correct abstract of the title of defendant and his co-trustees to the said manor and hereditaments was delivered to plaintiff or his solicitor within one month or thereabouts from the date of the said contract, and that such title has in fact been approved of by or on the part of the said plaintiff;

*Saith* that except as aforesaid and except that he has been informed and believes that in the first instance an abstract of the title to said estate as deduced unto F. M. T. the owner was sent from L. to the solicitors at Y. employed by the said defendants M. A. T. and S. T. S. on the 7th day of July 1821, and that a second abstract containing an account of the incumbrances on that estate was sent from L. to the same solicitors on the 11th day of the same month of July in the same year, and that a third abstract of the title to the S. estate being part of the trust hereditaments, was delivered to the said solicitors at Y., and were delivered by them to the said plaintiff or his solicitor, he is unable to set forth as to his belief or otherwise whether or not on the 12th day of July last, or at any other time, a partial abstract only of the title-deeds relating to parts of the said hereditaments comprised in the said agreement was delivered to the solicitors of the said plaintiff, or how otherwise, or whether it was not on the 19th of the same month and not before that an abstract of other deeds relating to the same part of the said hereditaments or any other parts was delivered to the solicitor of the said plaintiff, except as aforesaid;

*Saith* that he does not believe that any of the deeds material to the title to the said premises are omitted to be set forth in the same;

*Saith* he has been informed and believes that said F. M. T. in his answer in the suit in the said bill mentioned, has endeavoured to impugn the validity of a recovery suffered by him and his late father, of the said hereditaments and premises, but defendant saith he verily believes that such recovery was duly and properly suffered, and that except as aforesaid the validity of the same or of any other recovery, or of the deed leading the uses thereof, is not disputed in the said suit;

*Saith* he does not believe that there are any good or tenable objections to the title to the said manor and other hereditaments comprised in the said agreement, but on the contrary defendant believes that such title has been approved of by or on the part of the said plaintiff, and that defendant and his said co-trustees were in fact at the time of entering into the said agreement and are now seised or well entitled in equity for an estate of inheritance in fee-simple of or to the manor and other hereditaments aforesaid.

*Saith* he is wholly unable to set forth as to his belief or otherwise, except as he is informed by the said bill, whether or not at the time of entering into the said agreement hereinbefore mentioned plaintiff was aware or had been informed that such suit (as in the said bill is mentioned) was depending, or that the validity of such recovery as aforesaid was disputed in the manner hereinbefore mentioned, but defendant saith there being as defendant believes no well founded objection to the said recovery, he submits and insists that if the said plaintiff was not informed thereof at such time as aforesaid (but which defendant does not admit), yet that same ought not now to prevent the said contract from being completed;

*Admits* that the incumbrances upon the said hereditaments and premises are numerous and great, but defendant hath been informed by his co-trustee M. A. T. that the plaintiff was at the time of entering into the said agreement fully apprized and aware of this circumstance, and of the embarrassed state of the trust property, and that it was sold for the benefit of the numerous incumbrancers thereon, but the amount thereof prior to the date of the conveyance to the trustees defendants upon trust to sell was not so great as defendant believes as to exceed the amount of the purchase-money agreed to be given by the said plaintiff;

*Saith* he hath been informed and believes that such of the said incumbrancers upon the said hereditaments and premises as are necessary parties to make a perfect conveyance thereof to the said plaintiff, are willing to join therein;

*Submits* and insists that he and his co-trustees are able to procure a good and sufficient conveyance of the said premises to be executed to the said plaintiff, and that under such circumstances, and the said plaintiff having (as defendant believes) long since approved of the title to the said estates, he ought not to be released from his said contract, but ought to be compelled by the decree of this court to complete the same on his part;

*Saith* that the said plaintiff did not according to the best of defendant's recollection and belief make any applications or requests to defendant as in the said bill mentioned;

Does not believe that there are any valid objections to the title, but believes that the title has been approved of on the part of the plaintiff, and that the defendants are entitled to an equitable estate in fee-simple.

Cannot state whether plaintiff was or not aware of the former suit, or of the validity of the recovery being disputed, but insists that if he was not informed thereof, yet that it ought not to prevent the contract from being completed.

Admits that the incumbrances were numerous, but has been informed that plaintiff was aware that the property was sold to pay off the same, but does not believe that at the date of the trust conveyance, they amounted to as much as the purchase-money.

Believes that such of the incumbrancers as are necessary parties are willing to join.

Submits that defendants are able to procure a good conveyance to be executed, and that the plaintiff ought not to be released from the contract.

Denies any applications being made,

Or that he has threatened to commence any action at law.

*Denies* that he has threatened to commence or prosecute any action at law against the said plaintiff for breach of the said agreement or otherwise; but defendant nevertheless submits that the said plaintiff is bound to perform the same;

*Denies* combination &c. [*see sect. IV. antea, p. 7.*]

VII. *Answer of a trustee under a nuncupative will who had taken out letters of administration to the testator with his will annexed, submitting to account and claiming allowances for sums expended in educating and apprenticing the plaintiff.*

(*For the form of title, refer to sect. I. p. 1.*)

Admits that the testator made a nuncupative will as stated in the bill.

This defendant saving and reserving &c. [*see form No. 1. p. 3.*] answereth and saith he believes it to be true that W. W. the testator in the said bill named did on or about the — day of — duly make and publish his last will and testament being a nuncupative will in manner in the said bill in that behalf mentioned, and that the said will with the signatures in the said bill mentioned is in such words and figures or to such effect as in the said bill in that behalf set forth, but for certainty as to the date and contents of the said will this defendant craves leave to refer to the probate thereof when produced &c.; And this defendant saith he believes and admits it to be true that the said testator departed this life on or about the — day of the same month of —, and that he at his death left the said complainant and W. W. the younger in the said bill named his two natural sons him surviving as mentioned in the said bill; And this defendant admits it to be true that soon after the said testator's death the said will was in due form proved in the Prerogative Court of the province of C., and that letters of administration of the goods and chattels rights and credits of the said testator with his said will annexed were duly granted by the said court to this defendant; and that this defendant possessed and received all such parts of the said testator's personal estate and effects as he was able, and that he hath thereout paid all the said testator's funeral expenses and debts so far as the same have come to his knowledge and the said legacy of £—— to the said W. W., and that there remained a considerable balance of the said personal estate in his hands; And this defendant saith that he hath laid out all the surplus of the said testator's personal estate which hath come to this defendant's hands,

Admits his death leaving two sons the plaintiff and another since dead,

and that letters of administration with the will annexed were granted to the defendant, who has possessed the personal estate, and paid debts, &c.

and invested the surplus, and laid out the dividends to accumulate

and also the dividends and interest thereof from time to time (except some part thereof which hath been applied to the maintenance of the said complainant as hereinafter mentioned) in the purchase of 3 per cent. consolidated bank annuities in the joint names of this defendant and the said complainant, and in consequence thereof the sum of £—— of the said stock is now standing in their joint names in the books of the Governor and Company of the Bank of England; And this defendant saith that he hath from time to time laid out and expended certain sums in the maintenance and education of the said complainant, and hath lately entered into an engagement with Messrs. G.W. and P. calico-printers at D. to put the said complainant apprentice to them and to pay them the sum of £—— as an apprentice fee for the said complainant, and in consequence of such engagement the said complainant is now with the said Messrs. G.W. and P. as an apprentice; And this defendant submits that he ought to have an allowance made to him out of the dividends and interest which have arisen from the surplus of the said testator's estate for all sums expended by him for maintenance of the said complainant as aforesaid and also for the said apprentice fee; And this defendant further saith he believes it to be true that the said W.W. the son hath departed this life intestate unmarried and without issue; And this defendant submits to account for the said personal estate possessed by him, and to transfer the said stock into the name of the Accountant-General of this court as this court shall direct, but craves to have all just allowances made to him in such accounts as well in respect of the said maintenance and apprentice fee as otherwise. Without that &c. [see sect. IV. *antea*, p. 7.]

T. C. C.

(except a part applied to plaintiff's maintenance) in the funds in the names of plaintiff and defendant.

Saith that he has laid out certain sums in educating the plaintiff and apprenticing him,

and submits that he ought to have the same allowed him.

Believes that the other son died intestate and without issue, and submits to account.

VIII. *Answer of an executor and trustee under a will to a bill for an account filed by a legatee; the executor being also heir at law to the testator, and claiming as such to be entitled to freehold estates purchased by the testator after making his will and a codicil, and denying any republication thereof. The defendant having misapplied part of the produce of the real and personal estate, submits to account for the value of the government securities in which the same might have been invested, (referring to schedules annexed.)*

(For the form of title, vide antea, p. 2, form No. 4.)

Admits that the testator was seised of real estates, the description thereof set forth in the first schedule.

That after making his will and codicil he purchased other estates, and submits that the same descended to the defendant as his heir at law.

Admits that the testator was possessed of personal estate,

Admits also his will and codicil,

This defendant &c. [as in form No. 1. p. 3, and note (d), *ib.*] answering saith he admits that the testator S. M. in the said complainant's bill named was at the time of making his will and codicil and at the time of his death seised or entitled in fee-simple of and to certain real estates the names whereof this defendant hath set forth in the first schedule to this his answer annexed and which he prays may be taken as part thereof; And this defendant further answering saith that the said testator after making and publishing his said will and codicil, purchased certain other real estates which this defendant hath also specified in the said schedule; And this defendant has never heard nor does he believe that the said testator ever republished his said will and codicil or either of them after making such last-mentioned purchases, and therefore he submits such after-purchased lands descended upon him this defendant as the heir at law of the said testator; And this defendant further answering saith he admits that the said testator was at the time of his death possessed of and entitled to a personal estate consisting of such particulars as in the said complainant's bill mentioned and more particularly set forth in the second schedule to this defendant's answer annexed, and which he prays may also be taken as part thereof; And this defendant further saith he believes that the said testator when he was of sound and disposing mind memory and understanding duly made and published his last will and testament in writing bearing date on or about — in such words and to such purport and effect as in the said complainant's bill mentioned so far as the same is therein set forth; And this defendant further saith he believes that the said testator duly made a codicil to his said will bearing date — to such purport and effect as in the said complainant's bill mentioned, and that such will and codicil were duly executed so as to pass lands

of inheritance; And this defendant further saith that the said complainant has in his said bill very shortly stated the said will which this defendant apprehends admits of some doubt as to the true construction thereof, and which said will and codicil are in the following words, (that is to say): &c. &c.; And this defendant further saith that the codicil to the said will was in the words and figures following, (that is to say): &c. &c.; And this defendant further answering saith he believes that the said testator S. M. departed this life on or about — without revoking or altering the said will and codicil save as the said will is altered by the said codicil; And this defendant further answering saith he admits that the said testator left this defendant his heir at law, and the said complainant and the other natural children named in the said will and codicil him surviving; And this defendant further answering saith he admits that he this defendant alone proved the said will and codicil in the Prerogative Court of the Archbishop of C., and possessed all the personal estate of the said testator to the amount mentioned and set forth in the second schedule to this defendant's answer annexed; And this defendant further answering saith he admits that he hath entered upon the said testator's real estates of which the said testator was possessed at the time of making his said will and codicil, and received the rents and profits thereof for such length of time and to such amount as is mentioned and set forth in the second schedule to this defendant's answer annexed; And this defendant further answering saith that since the death of the said testator he hath sold and disposed of the said real estates of which the said testator was possessed at the time of making his said will and codicil, the particulars of which and the amount thereof this defendant hath set forth in the said second schedule to this his answer annexed; And this defendant further answering saith that he did employ part of the money arising from the real and personal estate of the said testator in fulfilling such contracts as the said testator was engaged in at the time of his death, and which is accounted for in the said second schedule to this defendant's answer annexed, whereby it will appear what interest profit or advantage hath been made by such monies so employed; and this defendant also employed part of such monies in his trade; And this defendant further answering saith that he hath in the said second schedule to this his answer annexed calculated the amount of government securities which the said testator's estate come to the hands of this defendant would have purchased if the same had been by this defendant from time to time laid out in government securities, and for which this defendant submits to account as part of the personal estate of the

setting forth the same more fully, the true construction being doubtful;

Believes that he died without revoking the will and codicil.

Admits that the defendant is heir at law,

that he alone proved the will, and possessed the personal estate,

and entered upon and received the rents of the real estates as set forth in the second schedule.

Saith that he has disposed of the real estates which the testator had at the time of making his will and codicil, and that he employed part of the produce in fulfilling the contracts entered into by the testator, and employed other part in trade.

Reference to the second schedule in which is calculated the amount of government securities which the estate possessed by the defendant would have purchased.

Reference to the first schedule as containing an account of the real estate of which the testator was seised ;

Reference to the second schedule for the particulars of the rental thereof,

and of the rents received by or for the use of the defendant, and of the monies produced by sale of the estates,

and also of the testator's personal estate, and the application thereof.

Believes that the plaintiff has attained 21.

Admits the applications made, but the true construction of the will

said testator, subject to the demands to which such personal estate is liable ; And this defendant further saith that he hath in the first schedule to this his answer annexed set forth a full true just and particular account of all and every the real estates which the said testator was seised of or entitled to in fee simple at the time of making his said will and codicil, and of which he continued to be seised at the time of his death, with the name or names thereof and of each and every part thereof, and where the same and each and every part thereof is situate ; and in the said second schedule the yearly value thereof and of each and every part thereof, and in whose tenure or occupation the same and each and every part thereof now is and from time to time since the death of the said testator hath been, and under what yearly or other rent or rents, and what part of the time since the death of the said testator this defendant hath been in possession or receipt of the rents and profits thereof and of what parts thereof, and who hath been and for how long time in possession and receipt of the rents and profits thereof and of each and every part thereof ; And this defendant further answering saith he hath in the said second schedule to this his answer annexed set forth a full true perfect and particular account of all and every sum and sums which have or hath at any time and when been received by this defendant or by any other person or persons by his order or for his use for or on account of the rents and profits of the said estates or any part thereof become due since the death of the said testator, or from or on account of the sale of the said estates or any part or parts thereof ; And this defendant further answering saith he hath in the said second schedule to this his answer annexed set forth a full true and particular inventory of all and singular the goods chattels and personal estate and effects whatsoever which the said testator was possessed of entitled to or interested in at the time of his death, and all the particulars whereof the same consisted, and the natures kinds quantities full true and real values thereof and of every part thereof, together with such particulars as have been possessed or received by or come to the hands of this defendant or of any other person or persons by his order or for his use, and how and in what manner and when and where and by whom and to whom and for how much the same and every part thereof hath been sold or disposed of ; And this defendant saith he believes that the said complainant attained his age of twenty-one years sometime since ; And this defendant further answering saith he admits that the said complainant hath made such applications and requests to this defendant as in the said complainant's bill mentioned ; And this defendant further



answering saith that he hath not refused to comply therewith, but as there are some doubts as to the true construction of the said will and several parties entitled to all of whom this defendant is to account, he this defendant is desirous to act in the premises as executor of the said S. M. deceased under the directions and indemnity of this honorable court.

being doubtful, defendant is desirous to act under the indemnity of the court.

IX. *Answer of an executrix submitting to act under the indemnity of the court.*

(For the form of title, refer to sect. I. p. 1.)

This defendant &c. [see form No. 1. p. 3.] answering saith she admits that S. W. the testator in the said bill named was at the time of his death possessed of a considerable personal estate, and particularly of the several sums in the public stocks or funds in the said bill of complaint mentioned; and that the said testator duly made and published his last will and a codicil thereto of such respective dates and to such purport or effect as in the said bill in that behalf stated; but nevertheless &c.;

Admits that the testator was possessed of considerable personal estate;

and also his will, and a codicil thereto;

*Believes* that the said testator did soon after making said will and codicil depart this life without altering or revoking the said will save by the said codicil, or without altering or revoking the said codicil, leaving this defendant his widow and such other persons as in the said bill in that behalf named him surviving;

Believes that he died without altering his will and codicil;

*Admits* that she hath duly proved the said will and codicil in the proper Ecclesiastical Court and hath taken upon herself the execution thereof, and hath by virtue thereof possessed herself of as much of the said testator's personal estate and effects as she has been able to do; And this defendant denies that she ever threatened to sell or dispose of the said stocks funds and annuities in the said will and bill mentioned without any regard to the interest of the said complainants in remainder therein, or hath made any transfer of the same;

Admits that she has proved the same, and possessed the personal estate, but denies having threatened to sell any part;

*Submits* to this honorable court what interest the said complainants are entitled to in the personal estate of the said S. W. by virtue of his said will;

*Saith* she hath in a schedule &c. set forth a full true and particular account of all the personal estate to which the said testator was entitled at his death, distinguishing what part thereof hath come to her hands or to the hands of any other person or persons

Reference to the first schedule for an account of the personal estate;

for her use, except such sums are mentioned in the schedule hereinafter referred to;

And to the second schedule for an account of the application thereof.

*Saith* she hath in the second schedule &c. set forth an account current between her and the estate of the said S. W., and this defendant hath therein set forth to the best of her knowledge &c. a full and true account of all sums of money part of the personal estate of the said testator come to her hands, or to the hands of any person or persons to her use and of the application thereof;

Submits to account, and to act under the indemnity of the court.

*Saith* she is ready and willing to account as this honorable court shall direct for all such parts of the personal estate of the said testator as have been possessed or received by this defendant, having all just and reasonable allowances made which she is entitled to as such executrix; And in all other respects this defendant submits to act as the court shall direct, upon being indemnified and paid her costs of this suit; And denies combination &c. [see sect. IV. *antea*, p. 7.]

W. A.

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\* X. *Answer of an executor and of the husband of the plaintiff to a bill for payment of a legacy—the executor admitting assets, and the husband claiming to be entitled to receive the legacy.*

(For the form of title, refer to sect. I. p. 2.)

Admit that the deceased was possessed of personal estate; also her will, and the bequest of the legacy;

These defendants W. M. and F. H. &c. [see form No. 2. *antea*, p. 3.] severally answering say they admit it to be true that M. M. deceased in the said bill named was possessed of considerable personal estate, and that she made such will of such date purport and effect as in the said bill set forth, so far as the same is therein set forth, and thereby gave to the said complainant the legacy or sum of £— in manner in the said bill mentioned, and nominated this defendant W. M. sole executor of her said will; but for greater certainty these defendants refer &c.; And these defendants further severally answering say they admit it to be true that the said testatrix departed this life at or about the time in the said bill in that behalf mentioned, and without altering or revoking her said will; And this defendant W. M. further answering saith he admits, and this defendant F. H. saith he believes it to be true that this defendant W. M. did duly prove the said will in the proper Ecclesiastical Court, and did undertake the execution thereof; And this defendant W. M. admits that under and by virtue of the said will

Her death;

And probate of her will by defendant W. M. who admits as—

he hath possessed himself of the said testatrix's personal estate to an amount more than sufficient to pay and discharge her funeral expenses just debts and legacies, and particularly the said legacy of £—, and that the said complainant hath applied to this defendant to be paid the said legacy or sum of £— so given to her by the said will as in the said bill mentioned, and that this defendant W.M. did refuse to pay the same to her without the consent and concurrence of this other defendant her husband, and without which this defendant is advised and humbly submits he could not safely pay the said legacy; And this defendant W. M. further saith he doth admit assets of the said testatrix come to his hands sufficient to answer the purposes aforesaid, and is ready and willing and hereby submits to pay the said legacy to such person or persons and in such manner as this honorable court shall be pleased to direct; And this defendant F. H. saith he claims to be and humbly insists that he is in right of the said complainant his wife, entitled to receive and be paid the said legacy or sum of £— so given to her by the said will as aforesaid, and humbly hopes the same will be ordered to be paid to him accordingly; And these defendants deny &c. [see sect. IV. *antea*, p. 7.]

sets sufficient to pay the legacy;

also admits the plaintiff's applications, and his refusal to pay the legacy without the consent of the other defendant;

That he is willing to pay the same as the court directs.

Claim by F. H. to receive the legacy.

E. K.

\* XI. *Answer of the executors of a deceased acting executor, to a bill of revivor; the defendants not admitting assets, not knowing what was due from their testator to the original testator, but submitting to account.*

(For the form of title, refer to sect. I. p. 2.)

These defendants &c. [see form No. 2. *antea*, p. 3.] severally answering say they believe it to be true that at or about the time in the said bill stated R.W. in the said bill of revivor named, exhibited his original bill of complaint in this honorable court against such parties as defendants thereto as in the said bill mentioned, thereby stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth, and that in consequence of the death of the said R.W. the said complainant T.W. at or about the time in the said bill of revivor mentioned, exhibited his supplemental bill in this honorable court against such parties defendants thereto as therein mentioned, stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth; And

Admit the original bill filed,

the supplemental bill,

and the subsequent proceedings.

Admit the death of G. R. a defendant;

That he had principally acted as executor, and that the defendants have since proved his will, and possessed his personal estate. Believe that the same is sufficient to answer what might be due to the estate of T. W. do not admit the same, but submit to account;

And submit that the suit and proceedings may stand revived.

that the said several defendants in the said supplemental bill named, afterwards appeared and put in their answers thereto, and that such proceedings have since been had in the said cause as in the said bill of revivor mentioned; but for their greater certainty nevertheless these defendants crave leave to refer to the said original and supplemental bills answers and other proceedings now remaining filed as of record in this honorable court; And these defendants further severally answering say they admit it to be true that before any further proceedings were had in the said cause, and at or about the time in the said bill of revivor in that behalf stated, G. R. one of the defendants to the said original and supplemental bills, and one of the executors and trustees under the will of the testator T. W. in the said bill of revivor named, and who hath principally acted in the trusts thereof, departed this life having first duly made and published his last will and testament in writing of such date as in the said bill of revivor mentioned, and thereof appointed these defendants executors; And these defendants admit that since his death they have duly proved his said will in the proper Ecclesiastical Court, and undertaken the executorship thereof, and are thereby become his legal personal representatives, and that they possessed the said G. R.'s personal estate and effects so far as they have been conveniently able, and these defendants believe (although they do not admit the same) that such personal estate and effects are sufficient to answer whatever might be due from the said G. R. at the time of his death to the estate of the said testator T. W. if any thing were so due; but these defendants not knowing the amount thereof are advised that they cannot with safety or propriety admit assets of their said testator to be in their hands sufficient to answer the same, and these defendants say they are ready to account for the said G. R.'s personal estate possessed by them or for their use, in such manner as the court shall be pleased to direct, if the same should become necessary; And these defendants further severally answering say they submit that the said suit and proceedings which became abated on the death of the said G. R. may stand and be revived against them as such executors as aforesaid, and be restored to the same plight and condition in which they were in at the time of the death of the said G. R.; Without that &c. [see sect. IV. *antea*, p. 7.]

XII. *Answer of an executor of a deceased executor to a bill of revivor and supplement; the defendant admitting assets.*

(*For the form of title, refer to sect. I. p. 2.*)

This defendant &c. [*see form No. 1. antea, p. 3.*] answering saith he believes it to be true that at or about the time in the said bill stated the several persons therein in that behalf named exhibited their original bill of complaint in this honorable court against such parties as defendants thereto as in the said bill are mentioned, thereby stating and praying to the effect in the said bill set forth so far as the same is therein set forth; and that such decree decretal order bill of revivor and other proceedings were had therein as in the said bill set forth; but for his greater certainty nevertheless this defendant craves leave to refer to the said original bill decree and other proceedings now remaining as of record in this honorable court; And this defendant further answering saith that A.W. in the said bill named hath lately departed this life, and that the said A.W. duly made and published his last will and testament in writing, and thereby appointed Dame A. B., R. T. and this defendant executrix and executors thereof, and that this defendant hath since the death of the said A.W. alone duly proved his said will in the Prerogative Court of the Archbishop of C. and is thereby become his legal personal representative, but this defendant doth not know nor can he set forth as to his belief or otherwise who is the heir at law of the said A.W.; And this defendant further saith he doth not know nor can form any belief whether the said A.W. did or not after the making of the report in the said bill mentioned, receive any sum or sums of money arising from the real and personal estate of D. G. the elder the testator in the pleadings of this cause named, which ought to have been accounted for by him; but this defendant saith he admits that he hath received assets of the said A.W. sufficient to answer any such sum or sums of money if it shall appear that any such were received and not accounted for by the said A.W. in his life-time; And this defendant saith that he is a stranger to the several other matters and things in the said bill inquired after; But submits that the said suit and the proceedings had therein should stand and be revived against him this defendant as such personal representative as aforesaid; And this defendant denies &c. [*see sect. IV. antea, p. 7.*]

Admits the filing of the original bill,

the decree and the subsequent proceedings;

The death of A. W. a defendant; His will;

And that the defendant alone proved the same, but cannot state who is the heir at law, nor whether A. W. after the making of the report possessed any part of the estate of D. G. but that he admits assets, if any such were possessed by A. W. and not accounted for.

And submits that the suit may be revived.

\* XIII. *Answer of an infant heiress to a bill by simple-contract creditors against the executors and trustees under the will of her father, who had died greatly indebted, possessed of real and personal estate.*

(For the title, see form No. 3. antea, p. 7.)

Does not know whether the testator was or not indebted to the plaintiff J. C.,

nor whether he signed a promissory note,

nor whether he paid off part of the amount secured by the promissory note, with all arrears of interest, nor what amount is due,

nor whether the testator was or not indebted to the plaintiffs J. C. and T. R. as solicitors,

or to J. R. for money lent,

nor whether he did or not sign the bills of exchange stated in the bill,

nor whether he was or not indebted to the plaintiff J. L. for money lent,

This defendant (25) answering saith she does not know and cannot set forth as to her belief or otherwise whether Z. R. the testator in the said bill named was or not in his life-time indebted to the said complainant J. C. in the sum of £315 or any other and what sum of money for monies lent and advanced paid laid out and expended to or for the use of the said Z. R., nor whether for securing the repayment thereof with lawful interest for the same he the said Z. R. did or not make and sign such promissory note of such date and in the words and figures or to the purport or effect as in the said bill stated and set forth, or to any other purport or effect, nor whether the said Z. R. did or not on the 28th day of April 1821 or at any other time pay off and discharge the sum of £100 or any other sum of money part of the said £315 secured by the said promissory note together with all or what arrears of interest, nor whether the sum of £315 or any other sum of money together with interest thereon from the 1st day of January last or from any other time doth or not now remain due and owing to the said complainant J. C., nor whether the said Z. R. was or not at the time of his death indebted to the said complainant J. C. and T. R. or either of them in the sum of £55 or any other sum of money for business done and transacted and monies paid laid out and expended for him or for his use in their business or profession of attornies and solicitors, nor whether the said Z. R. was or not also at the time of his death indebted to the said complainant J. R. in the sum of £35 for money lent and advanced or in any other sum of money, nor whether the said testator did or not make and sign such bills of exchange or promissory notes of such date respectively, and in the words and figures or to the purport and effect as in the said bill stated to bear date the 17th day of June 1824 and the 25th day of August 1824, or to any other purport and effect, nor whether the said testator was or not also at the time of his death indebted to the said complainant J. L. in the sum of £65 for money lent and advanced work and labour done and performed and goods sold and

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(25) See note (c), antea, p. 3, and note (i), p. 7. An infant's answer cannot be excepted to for insufficiency.

delivered or in any other sum of money, nor whether the said testator did or not make and sign such bill of exchange of such date and in the words and figures or to the purport and effect as in the said complainant's bill stated to bear date the 3d day of July 1824, or to any other purport and effect; but this defendant further saith she hath been informed and believes that the said testator was indebted to various persons on specialty and simple contract at the time of his death; And this defendant further answering saith she admits that the said Z. R. departed this life on the 16th day of April last, seised and possessed of or otherwise well entitled unto very considerable real and personal estate, and that he made and published his last will and testament in writing of such date purport and effect as in the said bill mentioned and set forth, so far as the same is therein set forth; And this defendant further saith she admits that the said testator departed this life as aforesaid leaving his wife S. R. the mother of this defendant and also a defendant in the said bill named, and this defendant his only child and heiress at law; And this defendant further answering saith she hath been informed and believes that the said S. R. together with M. C. D., A. K. and R. D. three other defendants in the said bill named and also trustees and executors named in the said will did on — duly prove the same in the Prerogative Court of the Archbishop of Canterbury, and take upon themselves the burthen of the execution thereof; And this defendant further saith she does not know and cannot set forth as to her belief or otherwise whether the said Z. R., M. C. D., A. K. and R. D. or any or either of them have or hath or not also as such trustees and executors named therein entered into possession of the said testator's freehold copyhold and leasehold estates and receipt of the rents and profits thereof, nor whether they or any or either of them have or hath or not also possessed themselves himself or herself of all or any part of the said testator's personal estate monies securities for money goods chattels and effects or any of them, nor whether they or any or either of them have or hath or not thereout paid and discharged the said testator's funeral and testamentary expenses, but this defendant hath been informed and believes that all the debts due and owing by the said testator at the time of his death still remain unsatisfied; And this defendant further saith she does not know and cannot set forth as to her belief or otherwise whether the said complainants have or not frequently by themselves and their agents made such applications and requests to the said other defendants as in the said bill in that behalf stated and set forth, or any other or what applications; And this defendant further answering saith she doth

nor whether he did or not sign such other bill of exchange as stated in the bill, but believes that he died indebted to various persons;

admits his death;

and his will;

leaving S. R. his widow and this defendant his heiress at law;

Believes that S. R. and the three other defendants proved the will;

but cannot state whether they entered into possession of the testator's estates;

or possessed his personal estate;

or paid his funeral and testamentary expenses;

but believes that all his debts are unpaid;

cannot state as to any applications having been made;

does not admit the will being

duly executed, or that the testator was of sound mind (26), and puts the plaintiffs upon proof thereof.

Saith that she is an infant, and submits her rights to the protection of the court.

not admit that the said testator's will was duly executed and attested as by law is required to pass real estates by devise, or that the said testator was of sound and disposing mind memory and understanding at the time of making and executing his said will, and humbly insists that the said complainants ought to be put to due proof thereof; And this defendant further saith that she is an infant under the age of twenty-one years, (that is to say) of the age of three years and — months or thereabouts, and humbly submits her rights and interests to the protection of this honorable court.

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XIV. *Answer of a widow electing to take the bequests made to her by a will, and to release all interest in the devised estates.*

(For the form of title, refer to sect. I. p. 1.)

Admits the will, and the bequest to the defendant;

also a codicil made by the testator;

his death;

and that the plaintiffs have proved the will and codicil;

This defendant &c. [see form No. 1. p. 3.] answereth and saith she believes it to be true that C. B. deceased the testator in the said bill of complaint named being possessed of a large personal estate did at or about the time in the said bill of complaint mentioned duly make and publish his last will and testament in writing of such purport and effect and containing such bequest to this defendant as in the said bill of complaint in that behalf set forth, and that the said testator appointed such persons as in the said bill of complaint named executors and executrix of his said will; And this defendant further answering saith she believes it to be true that the said testator afterwards and at or about the time in the said bill of complaint mentioned duly made and published a codicil to his said will in such words and to such purport and effect as in the said bill of complaint also set forth; but for her greater certainty nevertheless as to the said will and codicil and the respective dates purports and contents thereof this defendant craves leave to refer thereto when produced; And this defendant further answering saith she admits that the said testator departed this life at or about the time in the said bill of complaint in that behalf mentioned, without having in any manner altered or revoked his said will, save by the said codicil, and without having altered or revoked the said codicil; and that the said complainants have since duly proved the said will and codicil

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(26) It would not be proper to make such admissions on the part of an infant, but even if admitted they could not be read against the infant. 2 Madd. Ch. Pr. 333.



in the Prerogative Court of the Archbishop of Canterbury, and taken upon themselves the executorship thereof; And this defendant further saith she claims to be entitled to the benefits intended her by the said testator's will, and is ready upon the same being secured to her according to the directions in the said will contained to release to J. P. in the said will named all her right and interest in and to the premises in the said will mentioned, and for that purpose to execute all necessary instruments or deeds; And this defendant denies &c. [*see sect. IV. antea, p. 7.*]

claims the benefits intended by the defendant by the will, and offers to release all interest in the devised estate.

\* XV. *Form of answer by adult and infant defendants claiming as next of kin to the deceased wife of the plaintiff, who by his bill sought to set aside a secret settlement made by his late wife before her marriage (27).*

(*For the title, see form No. 9. p. 2.*)

These defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. (*the adults*) now and at all times hereafter saving and reserving &c. [*as in form No. 2. p. 3, as far as the words 'make answer unto,' and proceed thus.*] they these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P. and T. P. severally answering say they believe it to be true that the said complainant was for several years previously to the year 1812 on terms of intimacy and friendship with M. P. spinster in the said bill named, afterwards M. G. the wife of the said complainant, and that a treaty of marriage was for some space of time pending between the said complainant and the said M. P., which was at length in the said year 1812 concluded and agreed upon between them; and that on or about the 6th day of July 1813 the marriage between the said complainant and the said M. P. was duly had and solemnized, but for what space of time such treaty of marriage was pending, or when in particular the same was concluded and agreed upon, these defendants do not know and cannot set forth as to their information or belief or otherwise; And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. further severally answering say &c. &c. [*Inserting the names of the adults at the beginning of the answer to each interrogatory.*] And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. claim to be en-

Believe that the plaintiff was for years acquainted with his wife before their marriage; that a treaty was for some time pending;

and that in 1813 the marriage was solemnized.

Claim by the adults to be entitled jointly with the infants as the next of kin of the deceased's wife to the monies settled by her.

Claim by one defendant to have her share settled to her separate use.

Two of the defendants infants, and submit their interests to the protection of the court.

titled to the said principal monies and interest jointly with the said infant defendants W. P. and J. P. as the next of kin to the said complainant's said late wife, to the total exclusion of the said complainant's rights as in the said complainant's said bill alleged; and in case this honorable court shall be of opinion that they are entitled to the said principal monies and interest as such next of kin, this defendant M. B. humbly hopes that this honorable court will order and direct her part or share of and in the same monies and interest to be settled upon and for her separate use and benefit; And these defendants W. P. and J. P. severally say that they are infants under the age of twenty-one years, and that they severally claim such interests in the premises as they are respectively entitled to, and submit their several interests to the protection of this honorable court; And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. severally deny &c. [see form IV. *antea*, p. 7.]

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\* XVI. *Part of an answer of the widow and executrix of a deceased surviving executor; the plaintiff claiming either as administratrix or in her own right to be entitled to the share of a residuary legatee who was supposed to have attained twenty-one and to have died abroad intestate,—the answer stating a release executed by the plaintiff and her late husband to the defendant's late husband as surviving trustee and executor, and claiming the same benefit therefrom as if pleaded* (28).

Statement of the release.

And this defendant saith that by a certain deed poll or instrument in writing under the hands and seals (29) of N. P. and the said complainant then the wife of the said N. P. bearing date on or about the 24th day of February 1800, the said N. P. and the said complainant did in consideration of the sum of £181 to them paid by the said J. B. the receipt whereof they the said N. P. and the said complainant did thereby acknowledge and which sum was in fact so paid, remise release and for ever quit claim unto the said J. B. the late husband of this defendant his heirs executors and administrators all and all manner of action and actions &c. and demands whatsoever both at law and in equity or otherwise howsoever which against the said J. B. as such surviving trustee and executor of the said T. S. they the said N. P. and the said complainant or either of them

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(28) See *Ld. Red. Tr. Pl.* p. 303, 4th edit.

(29) See *Ld. Red. Tr. Pl.* p. 263.

ever had, and which they their heirs executors or administrators should or might thereafter have claim challenge or demand for or by reason or means of any matter cause or thing whatsoever; As by such deed poll or instrument in writing to which this defendant craves leave to refer when the same shall be produced will appear.

And this defendant submits to this honorable court whether or not if the said N. B. died under the age of twenty-one years the said complainant as the only surviving grand-child of the said testator T. S. as the said complainant alleges in her said bill, became entitled in her own right to the said share of the said N. B. under or by virtue of the said testator's will; And this defendant further answering saith she admits that applications have been made to her by or on the behalf of the said complainant, and also by one W. B. who stated himself to be the brother of the said N. B. for the purposes in the said complainant's original and amended bill of complaint mentioned, and this defendant positively denies that she ever refused to comply with such applications otherwise than as this defendant alleges, that she always distinctly stated in answer to such applications that whenever satisfactory proof of the death of the said N. B. was adduced, the executors of the said J. B. were ready to account for the said share of the said N. B. to the persons or person who should be legally entitled to the same; and this defendant saith that she hath always been and now is perfectly willing to account for and pay over the share of the said N. B. of and in the said testator's estate to the person or persons who is or are by law entitled to receive the same; and this defendant submits to the judgment of this honorable court, whether or not the said complainant is exclusively entitled either in her own right or as the legal personal representative of the said N. B. to the said share of the said N. B. either in whole or in part, even though it should satisfactorily appear that the death of the said N. B. took place at the period in the said complainant's original and amended bill of complaint stated; and this defendant submits to this honorable court that by virtue of the said general release of the 24th day of February 1800 from her and her said husband to the said J. B., she the said complainant is wholly barred from making any claims on the said J. B. or his estate, in respect of the estate of the said testator T. S., and this defendant craves leave to have the same benefit from the said release as if she had pleaded the same; and this defendant submits to act in the premises as such executrix as aforesaid under the direction and indemnity of this honorable court, and humbly hopes to have her reasonable costs and charges allowed her in this behalf; And this defendant denies &c.

Submits whether the plaintiff is or not entitled as surviving grand-child.

Admits applications having been made;

Denies having refused to comply therewith.

Submits whether the plaintiff is or not exclusively entitled either in her own right or as administratrix;

Submits that she is barred by the release,

and submits to act under the direction of the Court.

\* XVII. *Statement in an answer of the statute of frauds, and claiming the same benefit therefrom as if pleaded* (30).

And this defendant saith that by an act of parliament made in the 29th year of the reign of King Charles the Second, intituled "An act for the prevention of frauds and perjuries," it is amongst other things enacted, that from and after the 24th day of June 1677, no action should be brought whereby to charge any person upon any contract of any lands tenements and hereditaments or any interest in or concerning them, unless the agreement upon which such action should be brought or some memorandum or note in writing should be signed by the said party to be charged therewith or some other person by him lawfully authorized; And this defendant insists upon the said statute, and claims the same benefit as if he had pleaded the same.

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XVIII. *Answer of the lord of a manor who had seised certain copyhold premises for want of a tenant after the death of a former tenant.*

(For the form of title, refer to sect. I. p. 1.)

Admits that he is lord of the manor,

that I. H. was seised of certain premises,  
that I. H. and wife surrendered their estates to S. G. by way of mortgage,

that at a court baron S. C. as claiming under a bargain and sale was admitted to the same estates.

This defendant &c. [see form No. 1. p. 3.] saith he admits it to be true that he this defendant is lord of the manor of H. in the county of N., and that I. H. in the said bill of complaint named, was in and before the month of — seised to him and to his heirs according to the custom of the said manor of and in &c.; And that on or about — the said I. H. and M. A. H. his wife in the said bill of complaint also named, conditionally surrendered all their and either of their messuages lands tenements and hereditaments holden of and situate within the said manor, To the use of S. G. in the said bill of complaint mentioned her heirs and assigns, by way of security for the sum of — and lawful interest thereon; And this defendant saith that at a general court baron holden for the said manor on or about the — day of —, and not — as in the said bill of complaint in that behalf alleged, S. C. in the said bill of complaint also mentioned, was under and by virtue of such bargain and sale as in the said bill of complaint in that behalf set forth, admitted to all the said copyhold premises so surrendered by the said I. H. and

M. A. H., To hold to her and her heirs according to the custom of the said manor; and at the same court an acquittance or satisfaction under the hand of the said S. C. as executrix of the said S. G. on the said surrender of the — day of — was presented and duly entered on the court-rolls of the said manor; And this defendant further answering saith he believes that at a general court baron holden for the said manor on or about the — day of — the death of the said S. C. was presented by the homage, and that who was the next heir to the said premises was not known, and thereupon proclamation was duly made for any person or persons having right to the said premises to claim the same and be admitted thereto; and at a general court baron holden on the — day of — a second proclamation was duly made to the same effect; and at a general court baron holden for the said manor on the — day of — a third proclamation was made in like manner, and by reason that no person came in to claim the said premises or to be admitted thereto, a precept was issued at such last general court to the bailiff of the said manor, whereby he was commanded to seise in the presence of two or more copyhold tenants of the said manor all the said premises into the hands of the lord for want of a tenant; and at a general court baron holden for the said manor on or about the — day of — S. T. the bailiff of the said manor certified that on the — day of — then last past he the said S. T. had in the presence of I. C. and T. D. two copyhold tenants of the said manor entered upon and seised all the aforesaid premises into the hands of the lord for want of a tenant thereto; But for his greater certainty nevertheless as to the several surrenders and other proceedings, this defendant craves leave to refer to the court-rolls of the said manor or to the copies thereof when produced.

\*[And this defendant saith he is ready and willing to cause a court to be holden for the said manor and to admit as tenant to the said premises such person as this honorable court shall be pleased to direct, being indemnified in that behalf and paid his customary fine on such admission.] And this defendant saith that he is a stranger to all other the matters in the said bill of complaint contained; And this defendant denies &c. [see sect. IV. *antea*, p. 7.]

*Observations.*—The seisure appears to have been absolute and not conditional, and if such a seisure be warranted by the custom of the manor, there seems no reason why the lord should not insist upon his title under it. In that case the end of the answer in the place of that part which is between crotchets\*, would run thus:

“And this defendant further answering saith that according to the custom of the said manor of H., this defendant as lord of the

Satisfaction of the mortgage entered on the court rolls.

Believes that at another court the death of S. C. was presented, and first proclamation made for the heir to claim;

Second proclamation;

and third proclamation; no person claiming, a precept issued to the bailiff to seise the premises,

and at another court the bailiff certified that he had seised the premises.

Offers to hold a court, and to admit the rightful tenant on being paid the customary fine;

Or thus:—

Claims to be absolutely entitled, and submits that

he ought not to be restrained from proceeding at law.

“ said manor is become absolutely entitled to the said several premises by virtue of the notices and proceedings aforesaid; And “ this defendant humbly submits that he ought not to be compelled “ to admit any tenant thereto or to be restrained from proceeding “ to recover the same by ejectment.”

If the custom to entitle the lord be not clear, then the answer must stand as drawn; otherwise the defendant may be made to pay costs.

### XIX. *Answer of the mortgagor to a bill of foreclosure.*

(*For the form of title, refer to sect. I. p. 1.*)

Admits the loan, he admits it to be true that this defendant did at or about the time in the said bill of complaint in that behalf mentioned, borrow the sum of £— from A.W. the elder in the said bill of complaint the execution of the mortgage securities, named, and that thereupon such indenture of bargain and sale and such bond as in the said bill of complaint are set forth, were duly made and executed by and between this defendant and the said A.W. the elder, and were of such date and to such purport and effect as in the said bill of complaint in that behalf stated; but for his greater certainty nevertheless as to the said indenture and bond and the respective dates purport and effect thereof this defendant craves leave to refer thereto when produced; And this defendant further answering saith he admits it to be true that the said A.W. the elder departed this life before payment of the said principal-money or any part thereof; And this defendant further saith it may be true for any thing this defendant knows to the contrary that the said A.W. the elder left A.W. the younger in the said bill of complaint also named his eldest son and heir at law him surviving, and that he had first duly made and published his last will and testament in writing, and thereby appointed the said complainant T.W. and the said A.W. the younger and L.W. since deceased executors thereof, and that the said executors duly proved the said will in the proper Ecclesiastical Court, and that the said will did not in any manner affect the said mortgaged premises, and that the legal estate and interest therein descended on and vested in the said A.W. the younger, and that such indenture as in the said bill of complaint is stated to bear date &c. was duly made and executed by and between such parties and to such purport as in the said bill of complaint set forth; and that the said A.W. the younger departed this

the death of the mortgagee, but is ignorant whether he left A.W. his heir at law or made a will appointing the plaintiff T.W. and A.W. and L.W. executors, or whether they proved the same, or whether the legal estate descended to A.W. or as to the execution of a certain deed, or whether A.W. died leaving the plaintiff G.W. his heir at law,

life at or about the time in the said bill of complaint in that behalf mentioned, leaving the said complainant G.W. an infant, his eldest son and heir at law him surviving, and that he had first duly made and published his last will and testament in writing of such date as in the said bill of complaint mentioned, and thereby appointed the said complainants T.W. &c. executors thereof, and that the said complainants duly proved the said will in the proper Ecclesiastical Court, and that the said will did not in any manner affect the said premises, and that the legal estate and interest therein descended upon and is now vested in the said complainant G.W., and that the said T.W. departed this life soon after the death of the said last-mentioned testator, and that thereupon the said complaint T.W. became also the surviving executor of the said A.W. the elder, but this defendant knows nothing of the said several matters aforesaid save as he is informed by the said bill of complaint, and therefore craves leave to refer the said complainants to such proof thereof as they shall be able to make; And this defendant admits that the said principal sum of £—— or any part thereof hath not yet been paid, and that the same now remains due and owing from this defendant on the security of the said mortgaged premises together with an arrear of interest thereon from ——, but this defendant denies that the said mortgaged premises are a scanty security for the same, and on the contrary thereof this defendant saith that the said mortgaged premises are of the value of £—— and upwards; and this defendant saith that there is no other charge or incumbrance affecting the said mortgaged premises; and this defendant trusts this honorable court will allow him a reasonable time for the redemption of the said premises; And this defendant denies &c. [see sect. IV. *antea*, p. 7.]

or whether A.W. had made a will appointing the plaintiffs T.W., &c. executors, or whether they proved the will,

or whether the legal estate descended to G.W.,

or whether T.W. became the surviving executor of the mortgagee;

admits that the mortgage-money has not been paid and is still due with interest,

denies that the security is scanty,

or that there is any other incumbrance.

\* XX. *Answer of the executors of the first mortgagee to a bill of foreclosure, filed by the assignee of the second mortgagee (who had obtained possession of the title-deeds and claimed a priority over the first mortgagee) against the infant heir of the mortgagor, and also against a subsequent mortgagee.*

(For the form of title, refer to sect. I. p. 2.)

These defendants &c. [see form No. 2. p. 3.] severally answering say they have been informed and believe it to be true that such indenture of demise or mortgage of such date between such parties and of such purport or effect as in the said complain-

Admit the execution of the mortgage of the 10th May, 1814;

and that the deeds were delivered over to W. P. by the testator T. E.;

do not know whether T. E. sold certain part of the premises,

nor whether he paid part of the purchase-money to W. P. in reduction of his mortgage, but believe that the same was reduced to £400, and that it was agreed that the same sum should remain on mortgage of a particular estate.

Admit the execution of a deed of assignment to the plaintiff,

and that the deeds were delivered over to the plaintiff by W. P.,

but cannot state what is become of them;

ant's original (31) and amended bill of complaint mentioned to bear date the 10th day of May 1814 so far as the same is therein set forth was duly made and executed, but these defendants for greater certainty crave leave to refer to the said indenture when the same shall be produced; And these defendants further say they believe it to be true that all the title-deeds and writings relating to the premises comprised in the said indenture of demise or mortgage were delivered over by the testator T. E. in the said complainant's original and amended bill of complaint named to W. P. therein also named at the time of the execution of such indenture of demise, but these defendants do not know the same of their or either of their own knowledge; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief or otherwise whether the messuage or tenement in the said complainant's original and amended bill of complaint mentioned to be situate in &c. was or not sold and disposed of by the said T. E., nor whether he did or not pay the sum of £600 part of the mortgage-money in the said complainant's original and amended bill mentioned to be due to the said W. P. out of the purchase-money of such messuage, nor whether it did or not reduce such mortgage-money to the sum of £400, but these defendants believe that the same mortgage-money was reduced to the sum of £400, and that it was agreed that the same sum of £400 should remain as a mortgage on the estate called Little C. in the said complainant's original and amended bill mentioned as therein is alleged; And these defendants further say they have been informed and believe it to be true that such indenture of assignment as in the said complainant's bill mentioned to bear date the 17th March 1821 between such parties, and of such date purport and effect as in the said complainant's original and amended bill mentioned and set forth so far as the same is therein set forth was duly made and executed, and that the several title-deeds and writings relating to the said estate were together with the said indenture of demise or mortgage delivered over to the said complainant by the said W. P. at the time of the execution of the said indenture of assignment as in the said complainant's original and amended bill of complaint is alleged, but whether the same title-deeds and writings are not now in the custody or power of the said complainant or what is become thereof these defendants do not know and cannot



set forth as to their or either of their belief or otherwise; And these defendants further severally answering say they have been informed and believe it to be true that the said testator T. E. departed this life at the time in the said complainant's original and amended bill stated having first duly made and published his last will and testament in writing of such date purport and effect as therein in that behalf mentioned and set forth so far as the same is therein set forth, but these defendants for greater certainty crave leave to refer to the said will or the probate copy thereof when the same or either of them shall be produced; And these defendants further say they believe it to be true that the said testator left T. E. jun. another defendant to the said complainant's original and amended bill of complaint his eldest son and heir at law, and that F. B. and R. U. therein also named have renounced the devise made to them by the said testator's will, and have duly executed a deed renouncing and disclaiming the same, and that the said testator's real estates have descended upon and are now vested in the said defendant T. E. as his eldest son and heir at law as in the said complainant's original and amended bill is alleged; And these defendants further say they have been informed and believe it to be true that the said sum of £400 was not paid to the said W.P. or to the said complainant at the time in the said complainant's original and amended bill mentioned, and that the same or some part thereof together with some arrear of interest thereon is now due and owing to the said complainant, but what principal money and interest in particular these defendants do not know and cannot set forth as to their or either of their belief or otherwise; And these defendants admit that by the means in the said complainant's original and amended bill stated the said mortgaged premises became absolute in law in the said complainant, and these defendants submit to the judgment of this honorable court whether the said defendant T. E. ought not to pay to the said complainant what shall be found to be due and owing to him for principal-money and interest, and whether for the reasons hereinafter stated the said complainant ought to be permitted to have or enjoy the said mortgaged premises; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief or otherwise whether the said complainant hath or not made or caused such applications and requests to be made to the said defendant T. E. as therein stated or set forth or any other applications and requests, nor whether the said defendant T. E. doth or not absolutely refuse to comply therewith, nor whether the said defend-

Admit the death of T. E.,

and his will,

and that he left T. E. his heir at law, that F. B. and R. U. have renounced the devise to them and disclaimed, and that the real estates have descended upon T. E.

Admit that the £400 was not paid, and that the same or some part with interest is still due, but cannot state how much.

Admit that the premises have become absolute in law in the plaintiff.

Submit whether T. E. ought not to pay the plaintiff what is due to him.

Do not know as to any applications being made to T. E.

Deny that the premises are a scanty security.

State the execution of a mortgage by demise from T. E. to R. P. for securing £400.;

That default was made in payment,

that R. P. died, having made a will, and appointed the defendants executrix and executor,

and that they proved the same;

that T. E. paid to them £400, part of the £800, with all arrears of interest, and that the executrix of T. E. paid interest to 1820.

ant T. E. doth or not make such pretences as therein stated; And these defendants deny that the said mortgaged premises are at all a scanty security for the principal and interest due to the said complainant; And these defendants further severally answering say that by an indenture of demise by way of mortgage bearing date the — day of — 1813 and made between the said testator T. E. of the one part, and R. P. then of &c. since deceased of the other part, It is witnessed that in consideration of the sum of £800 sterling money therein expressed to be paid to the said T. E. by the said R. P. and which was in fact so paid and the receipt whereof the said T. E. did thereby acknowledge, he the said T. E. did grant bargain sell and demise unto the said R. P. his executors administrators and assigns, All that &c. To hold the same unto the said R. P. his executors administrators and assigns from the day of the date thereof for the term of 900 years from thence next ensuing and fully to be complete and ended, subject nevertheless to the proviso in the said indenture contained for redemption of the same premises and making void the said term of 900 years, on payment by the said T. E. his heirs executors administrators or assigns unto the said R. P. his executors administrators or assigns of the sum of £800 with lawful interest for the same at or upon the — day of — 1814; As by the said indenture now in the possession of these defendants and to which they crave leave to refer for greater certainty as to the tenor and contents thereof when produced will appear; And these defendants further say that default was made in payment by the said T. E. of the said sum of £800 and interest at the time in the said indenture mentioned for payment thereof, whereby the said estate and premises became vested absolute at law in the said R. P. for all the then residue of the said term of 900 years therein; And these defendants further say that the said R. P. departed this life on the — day of — having previously duly made and published his last will and testament in writing bearing date the — day of — 1812, and thereby appointed them these defendants executrix and executor thereof, and that on the — day of — 1818 they these defendants duly proved the same in the Consistory Court of the diocese of H. and are thereby become the legal personal representatives of the said R. P. deceased as to the term and premises; And these defendants further say that the said T. E. did on the — day of — pay to these defendants as such executrix and executor as aforesaid the sum of £400 part of the said principal sum of £800 so due and owing to the said R. P. deceased together with the arrears of interest thereon, and that M. F. E. the executrix of the said T. E. deceased did after the

decease of the said T. E. duly pay or cause to be paid unto these defendants all arrears of interest upon the remaining sum of £400 up to the — day of — 1820; And these defendants further say that there now remains due and owing to them as such executrix and executor as aforesaid upon or by virtue of the said indenture of mortgage of the — of — 1813 the principal sum of £400, together with the sum of £— for interest thereon at the rate of £5 per cent. per annum from the said 3d day of August 1820; And these defendants further say they have been informed and believe it to be true that at the time of the execution of the said indenture of mortgage bearing date the 3d day of February 1813 the said testator R. P. insisted upon having the title-deeds and writings relating to the said estate called Little C. delivered over to him, and the said testator T. E. pretending that the same were not then in his possession promised to deliver them up in a few days, but that he neglected to fulfil such promise and refused at any time afterwards to deliver them up when requested so to do by the said R. P.; And these defendants deny that any fraud was ever intended by the said R. P. in not having such title-deeds and writings delivered up to him, or that the same were so left in the hands of the said testator T. E. for the purpose of imposing upon the said complainant or any other person, or of permitting the said testator T. E. to obtain any further sums of money on the security of the said premises; And these defendants submit to the judgment of this honorable court whether they as the legal personal representatives of the said testator R. P. are not for the reasons aforesaid entitled to the said estate and premises called Little C., and to have the said principal and interest so due to them as aforesaid paid in preference to the said complainant; Or in case this honorable court shall be of opinion that the said complainant is entitled to the said mortgaged premises and to be paid all arrears of principal and interest in preference to these defendants by reason of the title-deeds being delivered over to him by the said testator T. E., and which these defendants allege was a fraud by the said T. E. upon the said R. P., whether they ought not to be permitted to redeem the said complainant, and to have possession of the said mortgaged premises and of the title-deeds and writings relating thereto delivered up to them in case the said defendant T. E. shall make default in payment to the said complainant at the time to be appointed by this honorable court; And these defendants deny &c. [ see sect. IV. *antea*, p. 7. ]

Statement of the amount due for principal and interest,

that at the time of the execution of his mortgage R. P. insisted upon having the deeds delivered up to him, which T. E. promised to do, but afterwards refused.

Deny that any fraud was intended in not having the deeds delivered up, or that they were left for the purpose of imposing on the plaintiff, or permitting T. E. to obtain further sums, and submit whether the defendants are not entitled to a preference to the plaintiff,

Or if not, whether they ought not to be permitted to redeem him.

XXI. *Answer to a bill for tithes by a vicar against the occupier of an ancient farm; the defendant asserting that the farm was part of a dissolved abbey which came into the hands of the Crown in the reign of Henry the 8th, and was from time immemorial held exempt from great tithes; that some of the small tithes were covered by moduses, and that agistment tithes were never paid (32), and submitting to account for what is due in respect of other small tithes.*

(For the title, see form No. 1. *antea*, p. 1.)

This defendant &c. [see form No. 1. *antea*, p. 3.] saith he doth not know or believe that the vicar for the time being of the vicarage and parish church of M. T. in the county of Y., hath at any time been entitled to have and receive to his own use the tithes both great and small of the several titheable matters and things from time to time arising growing increasing and renewing within the said vicarage and the titheable places thereof, except as in the said bill excepted, or other than as hereinafter is mentioned, so far as applies to the farm and lands which are occupied by this defendant.

Knows not whether the vicar is entitled to all tithes, great and small, except as appears from the answer.

Admits that the vicarage became vacant, That the plaintiff was duly instituted and inducted, and soon after duly qualified himself, and that he is entitled to all such tithes as former vicars were entitled to.

Saith he believes it to be true, that the said vicarage became vacant by the death of the preceding incumbent at or about the time in the said bill mentioned; and that the *plaintiff* was shortly afterwards duly and lawfully presented instituted and inducted into the vicarage and parish church of M. T. aforesaid, and that he might soon after his induction duly qualify himself to act and officiate as vicar thereof, and that he hath ever since acted and officiated, and now acts and officiates in the cure of the said vicarage, and that he may be well entitled to have take and receive to his own use from the death of the last incumbent, all such tithes and payments in lieu of tithes, as his predecessors the former vicars of the said parish were lawfully entitled to have take and receive within the said parish and the titheable places thereof.

Admits that defendant occupies an ancient farm.

Saith he admits it to be true that from and since the — day of — this defendant hath held and occupied and still holds and occupies within the said vicarage and the titheable places thereof, a certain ancient farm called or known by the name of C. G. farm, consisting of a farm-house and out-buildings and — acres of land or thereabouts.

Saith that the said ancient farm was at the time of the dissolution of the late dissolved abbey of F. in the county of Y. and from time to time and at all times from time whereof the memory of man is not to the contrary had been parcel of the said late dissolved abbey, and with the rest of the possessions of the said late dissolved abbey, which was one of the greater abbies, and had possessions of the value of £—— a year, was given and surrendered unto and came into the hands of his late Majesty King Henry 8. under and by virtue of the act of parliament made and passed in the 31st year of the reign of his said late Majesty, intituled “An act for the dissolution of monasteries and abbies.” And this defendant believes that from time to time and at all times from time whereof the memory of man is not to the contrary, down to and at the time of the dissolution of the said late dissolved abbey of F. the said ancient farm was holden and occupied by the said late dissolved abbey discharged and acquitted of and from the payment of all great tithes; and that by means thereof and by force of the said late act of parliament passed in the 31st year of the reign of his said late Majesty King Henry 8. the said ancient farm continued to be and hath ever since the passing of the said last-mentioned act of parliament been and now is discharged and acquitted from the payment of all great tithes.

Saith that from time whereof the memory of man is not to the contrary there hath been paid and payable and of right ought to be paid to the vicar for the time being of the said vicarage and parish of M. T. aforesaid by the occupier or occupiers for the time being of the said ancient farm, the several moduses hereinafter stated; (that is to say), yearly at —— the sum of —— for every milch cow; and the sum of —— for every gelt cow kept and fed upon the said ancient farm, in lieu of the tithe of milk; and also at —— the sum of —— for every foal yielded and brought forth upon the said ancient farm, in lieu of the tithe of foals; and also at —— the sum of —— for every hive of bees kept on the said ancient farm, in lieu of the tithe of honey and bees'-wax; and also at —— the sum of —— for every person in the family of such occupier or occupiers who did or ought to receive the holy communion, in lieu of Easter offerings; and on —— day the sum of —— for every householder on the said ancient farm, in lieu of the tithe of poultry and eggs.

Believes that the vicar for the time being is entitled to have and receive in kind all other the small tithes (except the tithe of agistment) arising growing renewing and increasing in and upon the said ancient farm.

Saith that the same was parcel of a dissolved abbey and came into the hands of King Henry 8.

And believes that from time immemorial the same was held by the abbey discharged of all great tithes,

and is now discharged therefrom.

Saith that from time immemorial the several moduses stated have been payable to the vicar in lieu of some of the small tithes.

Believes that he is entitled to receive all other small tithes except agistment.

Admits that he has grown wheat, &c. without setting out the tithes, the plaintiff not being entitled.

Saith he admits it to be true that he hath since the said — day of —, grown cut and carried from off the said ancient farm, considerable quantities of wheat barley oats beans and other grain and hay without setting out the tithe thereof or making any satisfaction to the *plaintiff* for the same or any part thereof, inasmuch as for the reasons aforesaid no tithe was due to the *plaintiff* in respect thereof, the same being great tithes; and defendant for the same reason hath not herein set forth an account of such corn grain or hay.

Saith that he paid the tithe agent all small tithes and moduses, who gave a receipt for the same.

Saith that in the month of — this defendant paid to — the agent of the said *plaintiff* the sum of £ — in full satisfaction for all small tithes and moduses in lieu of such tithes due to the said *plaintiff* up to —; and the said — then accepted the said sum of £ — on the part of the said *plaintiff*, in full satisfaction of all such small tithes and moduses up to —, and gave this defendant a receipt for the same as for one year's tithes due to the said *plaintiff* at — then last.

States the particulars of his farm and of titheable matters not covered by moduses.

Saith that the pasture lands of his said farm consists of — acres or thereabouts of the yearly value of — per acre, as he computed the same, and that from — to — there was bred upon his said farm — calves, — pigs, and — geese, and that — fleeces of wool of the value of — or thereabouts are due to the *plaintiff* for or in respect of the tithe of wool arising on the said farm during the same period, but that no lambs were bred thereon.

Saith that he had growing upon his said farm in that year — acres of turnips which he computed to be of the value of £ — or thereabouts, and that from the middle of the month of — to the middle of the month of — in the said year —, he depastured upon his said farm — two years old heifers and — two years old steers, together also with — sheep.

Saith that to the best of his recollection and belief he had not between — and —, growing renewing arising or increasing upon his said farm and lands in his occupation in the said parish of M.T. or the titheable places thereof, any titheable matters or things, except as aforesaid.

Believes that none of the vicars ever received agistment tithe, and submits that the plaintiff is not entitled thereto.

Saith that he believes that none of the vicars of the said parish ever received any tithe of agistment within the said parish, or any satisfaction for the same; and he therefore submits and humbly insists that the vicars of the said parish are not entitled to any tithe of agistment arising within upon or from his said ancient farm, or any satisfaction for the same.

States in respect of whom Easter offerings were

Saith that he hath not since the — day of — had more than — persons in his family for whom Easter offerings were or are

payable, and that he paid and rendered to the Rev. — the curate and agent of the *plaintiff*, the Easter offerings which were due at Easter —, Easter —, and Easter —, as the same became due and payable, and that by the immemorial usage and custom of the said parish — only is due from each such person yearly for Easter offerings.

Saith that he is and at all times hath been ready and desirous to account for and pay to the *plaintiff* what is due to him for the tithes arising upon or from or due or payable in respect of his said farm.

payable, and that the same were paid.

Submits to account for what is due in respect of tithes.

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XXII. *Answer of the East India Company to a bill by a lay impropiator, claiming tithes or customary payments in lieu of tithes in respect of warehouses, &c. held or occupied by the defendants, they denying his right thereto (33).*

These defendants &c. [see form No. 2. p. 3.] say they have heard and believe that the said *plaintiff* is now seised of or entitled to the impropriate rectory of — in the said bill mentioned, but how long he hath been seised of or entitled to the said rectory, or whether or not from the year — or from any other time, defendants know not nor can any how set forth, nor do they know nor can they set forth, save as after-mentioned, whether or not *plaintiff* as such impropiator or impropriate rector or otherwise, is or not now or hath or not since the said year — or any other time, been entitled to have receive or enjoy for his own use any tithes rates for tithes sums or customary payments or other duties in lieu of tithes, for the houses shops warehouses cellars stables and other buildings of the citizens and inhabitants of that part of the said parish which lies within the city of L. and the liberties thereof as in the bill stated or otherwise.

Admit that plaintiff is seised of the impropriate rectory, but cannot state from what period, nor whether he is entitled to receive any tithes or customary payments.

Admit that such act of parliament as in the bill mentioned was made and passed in the reign of his late Majesty King Henry 8, and that such decree as in the bill set forth was made in pursuance of the said act of parliament, though defendants for greater cer-

Admit the act of parliament, and the decree as set forth in the bill.

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(33) This appears to be the answer which was filed in *Antrobus v. The East India Company*, reported 13 Ves. p. 9; the decree was made in the plaintiff's favor for the payment of the tithes at the rate of 2s. 9d. in the pound upon the annual value of the premises held or occupied by the defendants; and in note (51), 2d edit. the decree is stated to have been affirmed by the House of Lords.

tainty as to particular contents of said act and of said decree, crave leave to refer thereto when produced to this honorable court.

Admit that they are occupiers and owners of various buildings for their servants.

Admit that they have ever since the year — occupied and do now occupy and are the owners of several stacks of warehouses and dwelling-houses for their warehouse-keepers and servants and waste ground, situate in or near G. L. and H. A., all which are in that part of the said parish of —, which is within said city of L., and was built by defendants.

Say that they being owners do not hold under any rent,

Say that having built and they themselves being the owners of said warehouses and dwelling-houses they do not now nor ever did hold the same or any part thereof under any yearly or other rent or for any consideration in the nature or in lieu of rent nor hath any yearly or other rent or any consideration in the nature or in lieu of rent at any time been paid for the said warehouses dwelling-houses or ground, though defendants say they do apprehend and believe that certain dwelling-houses or some edifices or buildings were formerly erected and did stand upon the scite of or upon the same pieces or parcels of land or ground on which defendants' said warehouses and dwelling-houses have been since erected or built and do now stand as aforesaid, and that some yearly or other rents or payment in the nature of rents were reserved or made payable for or in respect of such dwelling-houses or other edifices and buildings or the ground on which the same stood, but they are unable to set forth as to their knowledge or otherwise what such rents or payments were or whether they were paid or not, except that they say they have always understood or believed and do now understand or believe that such houses or buildings were inhabited or occupied by persons of very low descriptions and necessitous circumstances, and therefore not likely to pay or make good any rents or payments whatever in respect thereof.

believe that their buildings stand upon the scite of ancient messuages, and that some rents were formerly payable, but the houses being occupied by poor persons, believe that no rents ever were paid.

Say they do not inhabit any houses, &c. save as aforesaid.

Say they do not now inhabit or occupy nor have they inhabited or occupied since the said year — or during any part of that time any messuages or dwelling-houses warehouses yards sheds wharfs quays stables or other edifices buildings and premises situate within that part of the said rectory and parish which is in the city of L. or the liberties thereof save as aforesaid.

Insist that plaintiff as lay improprator is not entitled to any tithes or other payments.

Say they are advised and humbly insist that *plaintiff* as the lay improprator of said parish or rectory is not entitled under or by virtue either of the act of parliament or the decree in bill mentioned or otherwise to any tithes or yearly or other payments in the nature or in lieu of tithes for or in respect of the said warehouses and dwelling-houses of defendants or any of them, inasmuch as they have also been advised and do conceive that said act of parliament and



the said decree were both made with a view to the clergy of L. and not to lay impropiators and there is not any custom to warrant the demand of any such tithes or payments in lieu thereof.

Admit that having been so advised they have not paid but on the contrary have refused to pay any sums or sum of money to *plaintiff* or to any person for his use since the year — for or in respect of tithes or dues for these defendants' said warehouses and dwelling-houses or any of them, save and except that certain of their said warehouses having been built previous to the year — and *plaintiff* having in the month of — in that year made a demand to be paid tithes thereon at the rate of — in the pound on the yearly sum of £— such being as defendants believe the sum the said warehouses were rated at to the land-tax, and defendants not having sufficiently investigated the right of *plaintiff* to make such demand, defendants did then submit to make such payment to *plaintiff* and they have continued to make the same up to — last; but they do for the reasons aforesaid insist that such payment hath been made in their own wrong and through ignorance of their own rights and are therefore not bound to continue the same for the future (34).

Admit that they have refused to pay plaintiff since they have investigated as to his right to make a demand, and submit that the payments which they made previously were made in their own wrong, and that they are not bound to continue the same.

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(34) From the report in 13 Ves. p. 18, 19, it should seem that part of this answer was omitted in the former edition of this work.

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\* XXIII. *Answer to a bill by a rector and his lessee for arrears of tithes—three of the defendants had carried on the business of brewers in partnership, which was dissolved as to one, and another defendant admitted a partner; (the other defendant occupying a house and garden as their clerk;) the defendants admit the plaintiffs' title, and set forth the accounts required so far as they are able, but insist upon a composition which had been paid annually in lieu of tithes as binding upon the plaintiffs.*

*A supplemental answer was afterwards filed by three of the defendants by leave of the court, to explain and correct several mistakes made in setting out the accounts; (vide postea, p. 63.)*

The joint and several answer of W. P. T., J. S., E. W., R. T. and W. H. defendants, to the bill of complaint of the Rev. F. W. B. clerk, and C. E. complainants.

These defendants &c. [see form No. 2. p. 3.] severally answering say they admit it to be true that the said complainant F. W. B. was at or about the time in the said bill in that behalf mentioned duly and lawfully presented instituted and inducted to and into the rectory and parish church of S. M. in the said bill mentioned, and that he has ever since been and is now the true and lawful rector thereof, and that as such rector he became entitled to all the tithes both great and small of the several titheable matters and things growing renewing arising or increasing within the said rectory and parish and the titheable places thereof; And these defendants further severally answering say they do not know of their own knowledge, but they have heard and believe it to be true that in or about the month of May 1813 the said complainant F. W. B. did duly demise to the said complainant C. E. the several tithes arising within the said rectory or parish for the term of fourteen years from the 25th of March 1813 if the said complainant F. W. B. should so long live and continue rector of the said parish, and that in or about the month of June 1818 the said alleged lease was surrendered by the said complainant C. E. to the said complainant F. W. B., and that the said last-named complainant did thereupon duly grant another lease of the said tithes to the said complainant C. E. for the term of

Admit that F. W. B. was duly instituted and inducted, and is now the rector, and as rector entitled to all tithes great and small;

admit that a lease of the tithes was granted by F. W. B. to C. E.,

that such lease was afterwards surrendered, and a new lease granted, which is still subsisting;

twenty-one years from the 25th of March 1818 if the complainant F.W.B. should so long live and continue rector of the said parish, and that such last-mentioned lease is still subsisting; And these defendants further severally answering say they admit it to be true that in and previously to the said year 1813 these defendants W. P. T. J. S. and E.W. did hold and occupy a certain farm and lands hereinafter mentioned within the said rectory and parish or the titheable places thereof in copartnership, and that they did continue from thenceforth so to occupy the said farm and lands until the month of October 1820, and that this defendant E.W. did then retire from the said copartnership and cease to occupy the said farm and lands, and that upon this defendant E.W.'s retiring from the said concern this defendant R. T. was admitted a partner in the said concern in the place of this defendant E.W., and that these defendants W. P. T. J.S. and R.T. did from thenceforth hold and occupy the said farm and lands in copartnership together, and that the said farm and lands were previously to and until the latter end of the year 1813, fifty-seven acres two roods and thirty perches, exclusive of plantations and buildings, but including the gardens occupied by the defendants as herein stated; and in the latter end of the year 1813 these defendants W.P. T., J.S. and E. W. purchased an additional piece of land whereby the whole of their titheable land was increased to sixty-seven acres and eighteen perches, but the said quantity was reduced within the last two years by new plantations and several large ponds; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they deny that they these defendants or any or either of them had during the respective times in the said complainant's bill in that behalf stated growing upon and took from off the said farm and lands divers or any quantities of wheat barley and oats and other corn and grain, or that they or any or either of them had in each year during the time aforesaid growing upon and have taken off the said farm and lands divers or any quantities of wheat barley and oats and other corn and grain or divers or any quantities of clover and other artificial grasses, but these defendants admit that they have had during the time aforesaid divers quantities of grass which they mowed and made into hay; And these defendants severally deny that they did in any or either of the years of such their respective occupations enter upon and take from off the said farms and lands divers or any quantities of wood and under-wood excepting for the purpose of repairing the fences upon the said farm; And these defendants severally deny that they or any or either of them had growing upon and did take from off their said lands in any or either of such years divers or any quantities of turnips and

admit that the defendants W. P. T., J. S., and E. W. occupied a farm and lands until October, 1820, when E.W. retired, and the defendant R. T. was admitted a partner,

that the farm and lands were until 1813, fifty-seven acres, two roods, and thirty perches when additional land was purchased;

the quantity since reduced by plantations and ponds;

deny having grown corn, grain, clover, and grasses,

except grass mown and made into hay;

deny having cut wood and under-wood except for repairs;

deny having grown turnips, potatoes, or seeds;

admit having had cows,

but deny having had sows or mares producing young,

except in 1821, when one colt was produced; deny having kept any sheep, except in 1820, when they had one hundred ewes which produced one hundred lambs.

Deny having had turkies, &c.

Say that part of the lands was occupied as gardens which produced vegetables for their families, of which they kept no account;

deny having agisted barren cattle, except as after stated.

Say that they carried on the trade of brewers, and for the purposes thereof kept horses which were kept in the stable except when sick when they were turned out and depastured;

potatoes flax hemp cole seed mustard seed turnip seed or other kinds of seeds; And these defendants admit that they had respectively in each of such years upon their said farm and lands such milch cows as hereinafter stated which produced great quantities of milk, and such number of cows which have produced such calves as hereinafter stated, but these defendants deny that during the period aforesaid they or any or either of them have or hath had in their said farm and lands any sows or any mares which have produced colts or a colt excepting in the year 1821 when they had a mare which produced one colt only; And these defendants deny that they or any or either of them have or hath during the period aforesaid kept upon their said farm and lands any sheep or any ewes which have produced lambs, excepting that in the latter end of the year 1820 they kept about one hundred ewes, which last year produced about one hundred lambs only, and which ewes were duly shorn in the year 1821, but about sixty-two only of the said ewes were shorn in the year 1820, and such ewes produced such quantities of wool as hereinafter stated; And these defendants deny that they or any or either of them have or hath had upon their said farm and lands during the period aforesaid any turkies ducks geese or other fowls; And these defendants further severally answering say that during the period aforesaid they respectively occupied part of the aforesaid lands as gardens for their own private use which produced them vegetables and fruit for their families, but believing and fully understanding that the said complainant C. E. had accepted and taken a composition for all the titheable matters and things arising growing and increasing upon their said farm and lands these defendants did not keep any account of the vegetables and fruit growing upon the same as aforesaid, and they are totally unable to set forth any account thereof; and these defendants deny that they or any or either of them did in each or either of such years agist and depasture upon the said farm and lands any barren and unprofitable horses mares geldings bullocks oxen steers sheep or other barren and unprofitable cattle excepting as hereinafter stated; And these defendants say that during the period of their occupation of the said farm and lands as herein stated, they have carried on the trade or business of brewers, and for the purposes of their said trade have kept from sixteen to eighteen horses in each year, but the whole of such horses were kept in the stable and fed on hay, excepting when any of them were sick, when these defendants caused such horses to be turned out and depastured for a few days only, but these defendants cannot otherwise than as herein stated set forth the number of their said horses so depastured, or any further

particulars relative thereto; And these defendants deny that they or any or either of them have or hath had in any or either of such years growing upon and have taken from off their said farm and lands any other titheable matters and things than as hereinbefore stated; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they admit it to be true that these defendants W. P. T., J. S. and E. W. did previously to the year 1813 convert into a garden, and did from the said month of May 1813 up to the month of October 1820 occupy as a garden certain lands within the said rectory or parish adjoining to a dwelling-house occupied by this defendant E. W. as one of the partners in the said first-mentioned copartnership, but such garden formed part of the farm and lands aforesaid, and that this defendant E. W. but neither of these other defendants did during the time aforesaid have and take from off the said last-mentioned lands divers quantities of garden stuff and fruit as hereinafter stated; And these defendants W. P. T., J. S. and R. T. further severally answering say they admit it to be true that they these defendants have from the said month of October 1820 to the present time, and do now occupy by means of the said other defendant W. H. their traveller and clerk the said house and garden, and that the said defendant W. H. hath but neither of these other defendants have from the said month of October 1820 taken upon and from off the said last-mentioned lands divers quantities of garden stuff and fruit; And these defendants severally deny that they or any or either of them have or hath during the time in the said bill mentioned converted into garden ground any land within the said rectory or parish other than such land as herein particularly mentioned; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they deny that they or any or either of them have or hath in any or either of the years from the said month of March 1813 to the present time held and occupied or do now hold and occupy divers or any lands contiguous or near to the said last-mentioned lands or elsewhere within the said rectory or parish of S. M. aforesaid, or the titheable places thereof, or any lands in any other parish; And this defendant W. H. further answering saith he admits it to be true that he this defendant as the traveller and clerk of the said other defendants W. P. T., J. S., and R. T. hath ever since the month of October 1820 held and occupied and doth now hold and occupy the hereinbefore-mentioned garden situate within the said rectory or parish or the titheable places thereof, and that he hath in each year of such his occupation had growing upon and has taken from off the said lands divers quantities of garden stuff and fruit,

Deny having had any other titheable matters;

Admission by four defendants that three of them did up to 1820 occupy as a garden certain lands,

and that E. W., but not the other defendants, took therefrom garden stuff and fruit;

Admission by three defendants that they by their traveller, the defendant W. H., have occupied since 1820 the same garden, and that W. H. had therefrom garden stuff and fruit;

Deny that they have converted any other land into garden ground;

or that they have occupied or do occupy any other lands;

Admission by W. H. that he occupied the said garden, and took therefrom garden stuff and fruit, which were consumed in his own family, and of which no account was kept.

Admit that the titles of the several titheable matters aforesaid, if duly set out, would have been of considerable value;

Admit that they did not set out the whole of such tithes, and that they converted the same to their own use;

W. H. saith that he, occupying the garden as clerk to the other defendants, believed that they had made compensation;

the other defendants allege and insist that they have duly made compensation for all tithes up to March, 1821,

and say that believing C. E. had rented the tithes, they agreed with him to pay him £11 for one year, which was paid;

which this defendant consumed in his family, but this defendant never kept any account thereof, and therefore cannot set forth any particulars thereof or relative thereto; And all these defendants further severally answering say they admit it to be true that the tithes of the several titheable matters and things in the said complainant's bill mentioned as aforesaid, if the same had been duly set out and rendered to the said complainant C. E., would have been of considerable value, but of what value these defendants for the reasons aforesaid cannot set forth; And these defendants further severally answering say they admit it to be true that they these defendants did not nor did any or either of them set out the whole of such tithes to the said complainant C. E., and that they have respectively converted the whole of such tithes during the period, and according to the respective occupations of the said lands by these defendants as aforesaid to their own use for the reasons hereinafter stated; And this defendant W. H. admits it to be true that he hath never made any compensation for the tithes aforesaid possessed by him or for any or either of them, by reason that he this defendant having occupied the said garden as aforesaid as the clerk of the said other defendants, he this defendant considered and believed that the said other defendants W. P. T., J. S., and R. T. had made a compensation or satisfaction for such tithes to the said C. E.; And these defendants W. P. T., J. S., E. W. and R. T. further severally answering say they admit it to be true that they do respectively allege that they have and they do severally insist that they have duly made a compensation or satisfaction to the said complainant C. E. for all and every the tithes of the several titheable matters and things arising and growing and taken by these defendants respectively from off the said farm and lands occupied by them within the said rectory and parish or the titheable places thereof, and including all the said garden, up to the 25th day of March 1821, for these defendants severally say that in the year 1813 these defendants W. P. T., J. S. and E. W. understanding and believing that the said complainant C. E. had rented the tithes of the said rectory or parish from the said complainant F. W. B., applied to the said C. E. to know what he demanded by way of compensation or satisfaction for the aforesaid tithes, when the said C. E. proposed to these defendants to take and accept the sum of £11 by even half-yearly payments by way of compensation or satisfaction for their said tithes from the 25th day of March 1813 to the 25th day of March 1814, and these defendants having agreed thereto accordingly paid the said C. E. the said sum of £11 by equal half-yearly

payments; And these defendants W. P. T., J. S. and E. W. having afterwards made a small addition to the land in their occupation within the said parish or the titheable places thereof, the said C. E. himself proposed to and demanded of these defendants the sum of £13. 10s. as a composition or satisfaction for all and every the tithes of the several titheable matters and things arising growing and taken by them from off the lands occupied by them within the said rectory and parish or the titheable places thereof for the year commencing from the 25th day of March 1814 to the 25th day of March 1815, and these defendants having agreed thereto accordingly paid the said C. E. the said sum of £13. 10s. by equal half-yearly payments, and these defendants duly paid the said sum of £13. 10s. yearly and every year to the said C. E. as a compensation and satisfaction for all and every the tithes of the several titheable matters and things arising growing and taken by them respectively from off the said lands occupied by them or any or either of them (and including all the said gardens) within the said rectory and parish or the titheable places thereof, from the said 25th day of March 1814 to Michaelmas 1820, excepting that on Lady-day 1815 these defendants only paid the sum of £3. 15s. for the half-year's tithe due and payable on that day in consequence of these defendants having in that half year let off considerable part of the lands previously and subsequently occupied by them as aforesaid to divers other persons who paid the tithe thereof, the proportion of which was settled and arranged by the said complainant C. E.; And these defendants W. P. T., J. S. and R. T. further severally answering say that having commenced partnership in the month of October 1820 as aforesaid, they these defendants duly paid to the said C. E. the sum of £5. 15s. as a compensation and satisfaction for their tithes as aforesaid for the half-year commencing Michaelmas 1820 to Lady-day 1821, including the tithes arising from the said garden occupied by the said other defendant W. H. as their clerk as aforesaid, and on Michaelmas-day 1821 these defendants by their solicitor tendered the sum of £6. 15s. to the said C. E. for their previous half-year's tithe commencing at Lady-day 1821 up to Michaelmas day 1821, when the said C. E. refused to receive the same, but did not at that time or previously or subsequently thereto give these defendants or any or either of them any notice whatever of his intention, or that they were to consider the said annual payment by way of compensation or satisfaction for the tithes as at an end; And all these defendants further severally answering say they deny that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications

A small addition having been made to their lands, the composition was increased to £13. 10s., and continued to be paid to Michaelmas, 1820,

excepting for one half-year, when the tithes were paid by persons to whom the lands had been let.

Payment made of one half-year's composition to Lady-day, 1821.

Tender made at Michaelmas of another half-year's amount, which C. E. refused to accept, but gave no intimation that the composition was to be considered as at an end.

Deny applications being made as stated in the bill, although

they admit that C. E. wrote several letters claiming large arrears of tithes.

Admit that they have not entered into any composition with the plaintiffs for the tithes from the 25th March, 1823, than as before stated, but insist that the payments made are binding on the plaintiffs;

Admit that certain lands are situate in the parish of S. M., and that the defendants are owners and occupiers thereof. Reference to a schedule for an account of certain titheable matters;

and requests to these defendants or to any or either of them as in the said complainant's bill in that behalf stated in respect of the matters therein stated, although these defendants severally admit that the said complainant C. E. hath written several letters to these defendants demanding a large sum of money for pretended arrears of tithes, but which these defendants refused to pay, considering the aforesaid composition paid to the said C. E. to be in lieu of all tithes payable by them in respect of the lands occupied by them respectively within the said rectory and parish or the titheable places thereof, and that thereupon they were not bound to render to him any account or any further payments as demanded by him in and by such letters; And these defendants further severally answering say they admit it to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from their said lands situate within the said rectory or parish of S. M. aforesaid or any of them from the 25th of March 1823, otherwise than as aforesaid, but which payments or composition for tithes these defendants severally submit and insist are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payment or account in respect of the tithes aforesaid during the period aforesaid from these defendants or any or either of them; And these defendants further severally answering say they admit it to be true that the lands in the said complainants' bill in that behalf mentioned are respectively situate within the said parish of S. M. and not in any other parish, and that they these defendants are as hereinbefore stated the owners and occupiers of such lands; And these defendants W. P. T., J. S., E. W. and R. T. severally answering say that they have in the schedule to this their answer annexed, and which they pray may be taken as part thereof, set forth according to the best of their judgment and belief a full true and particular account of all and singular the quantities of hay which they have respectively had taken and received on or from off their said respective lands in each of the years aforesaid, or in any and which of them, and of the value thereof in each of such years, and also a like account of the number of milch cows which they respectively kept on their said lands or any part thereof in each of such years, and of the quantities of milk produced by such cows in each of such years, and also a like account of the number of cows which they respectively had on their said lands or any part thereof in each of such years, and of the numbers of calves produced thereby in each of such years, and also a like account of the numbers of sheep shorn by them or any



or either of them on their said lands in each of such years, and of the quantities of wool produced thereby; And these defendants severally deny for the reasons aforesaid that they or any or either of them have or hath during the period in the said complainants' bill and hereinbefore mentioned, withheld or subtracted from the said complainants any of the tithes of the several titheable matters aforesaid, and submit and insist that they are not liable to account to the said complainants or either of them for any of such tithes, or to pay to them or either of them any sum or sums of money in respect thereof; And these defendants severally deny &c. [see *sect. IV. antea, p. 7.*]

Deny that they have withheld or subtracted any tithes of the matters aforesaid, and insist that they are not liable to account.

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- \* XXIV. *Supplemental answer filed by leave of the court to explain and correct mistakes made by three defendants in a former answer put in by them jointly with other defendants to a bill by a rector and his lessee for arrears of tithes; (vide antea, p. 56.)*

(For the title, see form No. 10. p. 2.)

These defendants now and at all times hereafter saving and reserving to themselves and each of them all and all manner of benefit or advantage of exception which can or may be had or taken to the many errors uncertainties and other imperfections in the said complainant's bill of complaint contained for supplemental answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make any answer unto, these defendants severally answering say that by mistake in their said former answer they these defendants respectively stated that they denied that they or any or either of them had in any or either of the years from the month of March 1813 to the then present time held and occupied or did then hold and occupy divers or any lands contiguous or near to the last-mentioned lands in the said complainant's bill mentioned, or elsewhere within the rectory or parish of S. M. in the said bill mentioned or the titheable places thereof, or any lands in any other parish, for these defendants severally say that in the month of June 1821 they as copartners as in the said bill mentioned entered into the occupation of certain lands in the said parish of S. M. called T.

Say that by mistake they denied having held any lands contiguous to the lands mentioned in the bill, and say that in 1821 they occupied certain lands for the purpose of feeding sheep.

W. P. T. saith, and the other defendants believe that he from March 1819, held certain lands the property of his son,

and at the time of filing the bill certain other lands of his own;

Saith that the title-deeds are not in his own or in the other defendants' possession.

Say that previously to 1821 A. A. occupied the lands called T., and that he paid a composition in lieu of tithes;

Say that they occupied the same until 1822, and afterwards J. D. who has continued to pay the composition;

Admit that they paid no composition for the tithes thereof, the plaintiffs not having made any demand;

and containing about twenty-six acres, for a temporary occupation only, and for the purpose of feeding certain sheep then in their possession; And this defendant W. P. T. further answering saith, and these other defendants believe it to be true, that this defendant W. P. T. hath in each and every of the years from the month of March 1819 to the present time held and occupied and now holds and occupies individually certain lands the freehold property of his son the said R. T. within the said parish, and called B. containing about twelve acres, and that he the said defendant was also at the time of the filing of the said complainant's bill and had been for several years previously thereto in the occupation of fourteen or fifteen acres or thereabouts of land of his own freehold property in the parish of A., which parish adjoins the said parish of S. M. and which last-mentioned pieces of land are described in the title-deeds relating thereto as follows, (that is to say): All that close &c. &c. all which said closes and lands lie adjoining together, and are situate lying and being in the parish of A. aforesaid; and this defendant W. P. T. saith that such title-deeds are not now in his custody or power although the same lately were, nor are the same or any or either of them in the custody or power of the said other defendants or of any or either of them; And these defendants further severally answering say they have been informed and believe it to be true that one A. A. was the occupier of the said lands called T. for about ten years previously to Lady-day 1821 when he quitted the same, and that he during his said occupation paid a composition of £2. 18s. a-year by half-yearly payments of £1. 9s. to the said complainant C. E., in lieu and in satisfaction of all tithes arising from the said lands called T., and that he duly paid the same up to Lady-day 1821 when he quitted the occupation of the said lands; and the said defendants say that they entered upon the occupation of the said last-mentioned lands in the month of June 1821 as aforesaid, and remained in the occupation thereof until Lady-day 1822 when they quitted the same, and J. D. the owner thereof entered into the possession and occupation of the said last-mentioned lands, and as these defendants have been informed and believe it to be true has duly paid a half-yearly composition of £1. 12s. 9d. in respect of the said lands, and as a composition or satisfaction for the tithes thereof from Lady-day 1822 aforesaid; and these defendants severally admit that they have never paid any composition or satisfaction to the said complainants or either of them for the tithes arising from the said lands called T. during their occupation thereof as aforesaid, but severally say that the said complainants have not nor hath either of them made any demand upon these defendants

or any or either of them in respect of the tithes of the said lands called T. or for any sum or sums of money as and by way of a composition or satisfaction for the same ; And these defendants severally answering say they admit it to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from their said lands called T. aforesaid or for any or either of them ; And these defendants further severally answering say they deny that these defendants or any or either of them had during the time of such their occupation of the said lands called T. growing upon and took from off the said lands divers or any quantities [*deny having grown any wheat corn hay seeds &c. &c.*] And this defendant W. P. T. further answering saith that he purchased the said lands called B. in the year 1818 for his son the said R. T. and hath ever since been in the occupation thereof, and saith that on the tithe receipt day at or about Michaelmas 1819 to the best of his knowledge remembrance and belief, he this defendant attended at the office of the said complainant C. E. for the purpose of ascertaining what sum of money was payable by him to the said C. E. as and by way of composition or satisfaction for his tithes growing renewing and increasing upon his said lands called B., and that this defendant was thereupon told that the amount of the composition of this defendant in respect of such tithes was the sum of £1. 12s. 6d. payable by half-yearly payments, and that this defendant thereupon paid to the said complainant C. E. the sum of 16s. 3d. being the first half-yearly payment or composition for this defendant's tithes of the said last-mentioned lands ; And this defendant saith that he duly and regularly by himself or some friend of his paid the said sum of 16s. 3d. to the said C. E. as the half-yearly payment or composition of this defendant in respect of such last-mentioned tithes, yearly and every year from Lady-day 1819 until Lady-day 1821 ; And this defendant W. P. T. further answering saith he admits it to be true that he doth allege and insist that he hath in manner aforesaid duly made a composition or satisfaction to the said complainant C. E. for all and every the tithes of the several titheable matters and things arising growing and taken by this defendant W. P. T. from off the said lands called B. occupied by him during the period aforesaid ; And this defendant W. P. T. further answering saith that he this defendant instructed his solicitor the late Mr. J. D. on or about Michaelmas 1821, to tender the sum of 16s. 3d. to the said C. E. for his previous half-yearly tithes of the said lands called B., commencing from Lady-day 1821 up to Michaelmas-day 1821, and this defendant believes that the said Mr. J. D. did accordingly tender

Admit that they never entered into an agreement for the same.

Deny having grown wheat, &c.

W. P. T. saith that he purchased the lands called B. and occupies the same, and in 1819 applied to know the amount of composition, when he was told £1. 12s. 6d. ; that he then paid one half-year's amount, and continued to pay same until Lady-day 1821 ;

Admits that he alleges, and insists that he has made a composition for the tithes of the lands called B. ;

Saith that he instructed his solicitor at Michaelmas 1821 to make a tender to the plaintiff C. E., believes that he did so,

and saith that no notice has been given to determine the composition;

Denies applications being made as stated in the bill;

and admits that he never entered into any agreement with the plaintiffs in respect of the tithes than as aforesaid, but insists upon the payments made as binding;

Denies having grown on the lands called B. wheat, &c. but admits having grown clover and grass made into hay.

the same to the said C. E.; and this defendant saith that the said C. E. hath not at any time either previously or subsequently thereto given this defendant any notice whatever of his intention, or that he this defendant was to consider the said annual payment by way of composition or satisfaction for his tithes aforesaid as at an end; And this defendant W. P. T. further answering saith he denies that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications and requests to this defendant as in the said complainants' bill in that behalf stated in respect of the matters therein stated, otherwise than as in this defendant's former answer stated; And this defendant W. P. T. further answering saith he admits it to be true that he never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from his said land called B. situate within the said rectory or parish of S. M. aforesaid or any of them from Lady-day 1819 otherwise than as aforesaid, but which payments or composition for tithes this defendant submits and insists are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payments or account in respect of the tithes aforesaid during the period aforesaid from this defendant; And this defendant W. P. T. further answering saith he denies that he hath had during the respective times in the said complainants' bill in that behalf stated, growing upon and took from off the said lands called B. divers or any quantities of wheat barley and other corn and grain excepting oats as hereinafter stated, or had in each year during the time aforesaid, growing upon and had taken from off the said lands divers or any quantities of wheat and other corn and grain excepting oats, but this defendant admits he hath had such quantities of clover as hereinafter stated but no other artificial grasses, and that he hath had during the time aforesaid divers quantities of grass which he mowed and made into hay, and divers quantities of potatoes turnips and parsnips; And this defendant &c. &c.; And these defendants severally deny &c. [see *sect. IV. antea, p. 7.*]

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XXV. *Further answer after exceptions taken and allowed to the defendant's former answer to a bill for an account, and to restrain the infringement of a copyright.*

(For a form of title refer to p. 2.)

This defendant saving and reserving to himself, as in and by his former answer to the said complainant's said bill of complaint was saved and reserved, for further answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith he admits it to be true that this defendant hath by the defendants T. N. L. and R. O. and by other booksellers employed by him, published and sold many copies of the — edition of — published by this defendant as in his former answer mentioned; and that the number of such copies sold by him amounts in the whole to — or thereabouts as nearly as this defendant can set forth the same to his knowledge or belief; but this defendant denies that he is now proceeding or threatens to proceed in publishing and selling the said book, having discontinued the sale thereof, as in this defendant's former answer mentioned; And this defendant further answering saith that the profit which he hath made by such publication doth not exceed the sum of £ — to the best of this defendant's knowledge and belief, and this defendant admits that he hath applied the produce and profits of the said publication to his own use; And this defendant saith that he printed and published — copies of the said book or work and no more, and that he hath sold — copies, and that there now remain — copies in his own custody or power or in the custody or power of other persons by his order or for his use as nearly as he can set forth the said several particulars as to his knowledge information or belief; and this defendant hath in a schedule to this his further answer annexed or under-written and which he prays may be taken as part thereof, set forth to the best of his knowledge remembrance information and belief, a just and true account of all the sums of money which have arisen by the publication and sale of the said book and the profits which have arisen therefrom.

Admits that he has by himself and others sold many copies of the work,

and stating the number of such copies;

Denies that he is continuing the publication;

Stating the amount of profit, and admitting that he has applied the same to his own use;

Stating the number of copies printed, and the numbers sold and remaining unsold,

and referring to a schedule for an account of the monies produced by publication, and the profits arisen therefrom.

J. L.

XXVI. *Answer of a trustee submitting to act as the court shall direct.*

Admits the execution of the marriage settlement,

the solemnization of the marriage,

the birth of the children, that he declines to act and is desirous of being discharged, offering to convey on being indemnified and paid his costs.

This defendant &c. [see form No. 1. p. 3.] admits it to be true that such indentures of lease and release as in the said bill of complaint are stated to bear date —, were duly made and executed by and between such parties and to such purport or effect as are therein set forth so far as the same are therein set forth; but for his greater certainty nevertheless this defendant craves leave to refer to the said indentures when produced; And this defendant further answering saith he admits it to be true that the intended marriage between the said complainants J. P. and E. P. was soon afterwards had and solemnized, and that the said other complainants (*the children*) are the only children of the said marriage; And this defendant admits that he doth decline to act in the trusts of the said settlement, and that he is desirous of being discharged therefrom, and that he is ready to convey and release the said trust premises to the said complainant S. M. M. and such new trustee as may be appointed by this honorable court on being indemnified in that behalf and paid all his costs and expenses.

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XXVII. *Conclusion of an answer insisting that plaintiff's remedy is at law and not in equity, and claiming the same benefit as if the defendant had demurred to the bill.*

And this defendant submits to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said complainant's bill; And this defendant denies &c.

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## ANSWERS AND DISCLAIMERS (35).

\* XXVIII. *Answer and disclaimer by the personal representatives of a mortgagee, relinquishing the security of the premises comprised in the plaintiff's mortgage.*

In Chancery.

The joint and several answer and disclaimer of J. F. and R. C. two of the defendants to the original and amended bill of complaint of W. S., J. C., and T. P., complainants.

These defendants &c. [*see form No. 2. p. 3.*] say they admit that J. C. in the said bill named departed this life on the — day of —, having first duly made his last will and testament whereby he appointed his sons these defendants joint executors thereof, and that they these defendants proved the same in the Prerogative Court of the Archbishop of York on the — day of —, and thereby became his legal personal representatives; And these defendants further severally answering say they do not claim any interest in the estates in the said bill stated to be charged with the annuities to the said complainants W. S. and J. C. therein mentioned and with the mortgage therein also mentioned to be assigned to them; And these defendants further severally answering say they do not object to the payment of what may be due to the said complainants out of the rents and profits of the said estates; And these defendants do disclaim all right title and interest in and to the said estates and every part thereof; And these defendants deny &c. [*see sect. IV. antea, p. 7.*]

Admit the death of the testator, his will appointing the defendants executors, and that they proved his will,

Say they do not claim any interest in the premises, nor object to the payment of what is due to the plaintiffs,

and disclaim all right and interest in the estates.

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(35) See *Ld. Red. Tr. Pl.* p. 106, 318, 4th edit.; 2 *Madd. Ch. Pr.* 336.

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XXIX. *Answer and disclaimer denying having ever claimed any right or interest in the premises in the bill mentioned.*

Answer and disclaimer of A. B. the defendant to the bill of complaint of C. D. complainant.

Denies that he ever claimed, and now disclaims all right and interest in the premises.

This defendant &c. [see form No. 1. p. 3.] saith that he doth not know that he this defendant to his knowledge or belief ever had nor did he claim or pretend to have, nor doth he now claim any right title or interest of in or to the estates and premises situate &c. in the said complainant's bill set forth or any part thereof, and this defendant doth disclaim all right title and interest to the said estates and premises and every part thereof; And this defendant denies &c. [see sect. IV. antea, p. 7.]

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XXX. *Answer and disclaimer of a trustee under a will, denying having ever interfered in the trusts or received the rents of the trust estates.*

The several answer and disclaimer of A. B. one of the defendants to the bill of complaint of L. M. complainant.

Believes that the testator died seised of certain estates,

that he made a will appointing defendant trustee,

and E. F. executor,

that he died soon after, seised of the estates.

Saith that he refused to intermeddle in the trusts,

This defendant &c. [see form No. 1. p. 3] answereth and saith that he believes that C. D. did die seised of such estates in — as in the said complainant's said bill are mentioned; And this defendant does believe that the said C. D. did make such last will and testament in writing and did thereby create such trusts out of the said — estates and appointed this defendant trustee thereof in such manner and to such purport and effect as in the said complainant's said bill for that purpose set forth; And this defendant does believe that the said testator made E. F. gent. executor of his said will; and this defendant does believe that the said C. D. soon after making his said will departed this life, (that is to say): on or about the — day of —, without revoking or altering his said will, seised of such estates in — as in the said complainant's said bill are set forth; And this defendant further saith that he was advised that the said trust would be attended with some difficulty besides expense and loss of time to this defendant; therefore this defendant abso-



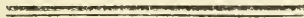
lutely refused to intermeddle therewith or in any way concern himself therein; And this defendant denies that he or any person or persons for him ever entered on the said trust estate, or ever received any of the rents and profits thereof; but this defendant has been informed and believes that the same were received by G. H. of &c. gent. who was employed by the said testator C. D. in his life-time to receive the rents and profits of the said — estate for him the said C. D.; And this defendant believes that the said G. H. hath received the said rents and profits of the said trust estate ever since the death of the said testator C. D. and doth still continue to receive the same; And this defendant positively denies that the said G. H. had any power authority or direction from this defendant to receive all or any part of the rents and profits of the said trust-estate, or that he ever accounted to this defendant for the same; and this defendant is very desirous and ready to be discharged from his said trust and to do any act for that purpose as this honorable court shall direct, this defendant being indemnified in so doing and having his costs; And this defendant further saith that as to so much of the said bill as seeks a discovery of this defendant's title to the lands in —, this defendant saith that he doth not know that he this defendant to his knowledge or belief ever had nor did he claim or pretend to have nor doth he now claim or pretend to have any right title or interest of in or to the said estate in — in the said complainant's bill set forth or any part thereof; and this defendant doth disclaim all right title and interest in and to the said estate in — in the complainant's said bill mentioned and every part thereof; And this defendant denies &c. [see sect. IV. *antea*, p. 7.]

denies having ever entered into possession; believes that the rents were received by G. H. who was the testator's receiver;

and that he has continued to receive the same; denies that he had any authority from defendant,

who is desirous to be discharged.

Denies that he ever claimed, and doth disclaim any right or interest in the premises.



## CHAPTER X.

## DEMURRERS.

Whenever any ground of defence is apparent on the bill itself, either from matter contained in it, or from a defect in its frame, or in the case made by it, the proper mode of defence is by demurrer. The causes upon demurrer are merely upon matter *in* the bill, or upon the *omission* of matter which ought to be therein or attendant thereon, and not upon any foreign matter alleged by the defendant (1).

A demurrer is always in bar and goes to the merits of the case (2); whatever the bill represents as *fact* must be generally taken to be true by the demurrer; but not what the bill states as inference from matter of law (3).

A defendant cannot demur and plead or demur and answer to the same matter, for the answer will over-rule the demurrer; and a demurrer to relief is over-ruled by an answer to the facts, or parts of the bill, in respect of which relief is prayed (4). A demurrer if good to the relief prayed by a bill is good also to the discovery sought for the purpose of the relief (5); the defendant however may waive the benefit of the rule as against himself, and may demur to the relief and yet answer as to the discovery (6); but he cannot answer the discovery in part and demur to part, nor can he demur to a discovery only and not to the relief prayed, because the plaintiff may be entitled to relief without being entitled to it through the discovery, and may then obtain a decree, though he has not established his right by the defendant's answer (7). Where

(1) Ld. Red. Tr. Pl. p. 107, 8, 4th edit. ; 2 Madd. Ch. Pr. 282.

(2) 1 Atk. 543.

(3) 3 Mer 503.

(4) 2 Madd. Ch. Pr. 282, 3; *Jones v. Earl of Strafford*, 3 P. Wms. 80.

(5) 1 Madd. Ch. Pr. 216.

(6) *Abraham v. Dodgson*, 2 Atk. 156, 7; and note (p), p. 185, Ld. Red. Tr. Pl.

(7) *Morgan v. Harris*, 2 Bro. Ch. Ca. 124; *Attorney-General v. Brown*, 1 Swanst. 294; *Waring v. Mackreth*, Forr. 129, 136; 2 Madd. Ch. Pr. 286.

the demurrer extends to relief to which the plaintiff is entitled it will be bad, though there is some relief prayed to which the plaintiff is not entitled (8). A demurrer (unlike a plea) cannot be good in part and bad in part (9); if however several defendants join in a demurrer, it may be good as to some of them and bad as to the others (10).

A defendant may put in separate demurrers to separate and distinct parts of a bill, for separate and distinct causes; for the same grounds of demurrer frequently will not apply to different parts of a bill, though the whole may be liable to demurrer; and in such case, one demurrer may be over-ruled upon argument, and another allowed.

A demurrer must express the several causes of demurrer; and in case the demurrer does not go to the whole bill, it must clearly express the particular parts of the bill demurred to (11). It is not a proper way of demurring to say that the defendant answers to such and such facts, and demurs to all the rest of the bill; the defendant ought to demur specifying precisely what it is that he refuses to answer (12), and this must *not* be done *by way of exception*, as by demurring to all except certain parts of the bill (13).

A demurrer *ore tenus* must be to that which the defendant has demurred to on the record. If the cause of the demurrer on the record is not good, he may at the bar assign other cause but he cannot demur *ore tenus* upon a ground which he has not made the subject of demurrer on the record (14).

A *speaking demurrer* is bad; as where by way of *argument or inference* the demurrer suggests *a material fact* which is not to be found in the bill (15).

(8) *Todd v. Gee*, 17 Ves. 279, 2d edit.

(9) *Baker v. Pritchard*, 2 Atk. 388; 2 Madd. Ch. Pr. 286.

(10) 8 Ves. 403.

(11) Ld. Red. Tr. Pl. 213, 4; 4th edit.; and see note (h), *ibid*.

(12) 2 Madd. Ch. Pr. 283.

(13) *Robinson v. Thompson*, 2 Ves. & B. 118; *Wetherhead v. Blackburn*, *ib.* 121; but it seems that a demurrer to the whole bill, with an exception of a very small part may be good in point of form; *Hicks v. Raincock*, 1 Cox's Ca. 41.

(14) *Pitts v. Short*, 17 Ves. 215, 6, 2d edit.; 2 Madd. Ch. Pr. 286.

(15) See 2 Madd. Ch. Pr. 287; *Edsell v. Buchanan*, 2 Ves. jun. 83; *Cawthorn v. Chalié*, 2 Sim. & Stu. 129; *Davies v. Williams*, 1 Sim. 8.

\* I. *A general demurrer for want of equity (where there is only one defendant.)*

In Chancery.

The demurrer of F. C. E. defendant, in the bill called F. E., to the bill of complaint of A. B. complainant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged (16), doth demur in law to the said bill, and for cause of demurrer showeth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant (17) touching the matters contained in the said bill or any of such matters; [*Or thus*: And for cause of demurrer saith that it appears by the said complainants' own showing by their said bill of complaint that the said complainants are not entitled to the discovery or relief prayed by their said bill against this defendant (18);] Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

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(16) If a demurrer is only to a part of the bill, (as where a discovery is sought of the defendant's title) insert the following form after the word 'alleged':

'As to so much of the said bill as seeks that this defendant may answer and set forth whether &c. or as seeks any discovery from this defendant whether &c. [*setting out the interrogatories*] this defendant doth demur in law, and for cause of demurrer sheweth' &c.

(17) If the demurrer is only to a part of the bill, insert the following words after the word 'defendant':

'As to the matters hereinbefore specified or any of such matters; Wherefore' &c. [*and conclude as in page 33, postea.*]

(18) See other forms of a demurrer by a defendant for want of equity, *postea*, p. 77, 8; and p. 80.

II. *A general demurrer for want of equity (where there are several defendants.)*

In Chancery.

The demurrer of D. D., J. D., and S. K. three of the defendants to the bill of complaint of S. S. complainant.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from these defendants respectively or any of them, or to any relief against them, as to the matters contained in the said bill or any of such matters, and that any discovery which can be made by these defendants or any of them touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainant to any relief in this court touching any of the matters therein complained of; Wherefore and for divers other good causes of demurrer appearing in the said bill these defendants do demur thereto, and they pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

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\* III. *Demurrer to so much of a bill as sought a discovery of title-deeds, for want of an affidavit being annexed to the bill that the same were not in the plaintiff's custody or power (19).*

The demurrer of &c.

This defendant by protestation &c. [see form No. I. p. 74.] as to so much of the said bill as seeks a discovery of the marriage settlement of — the late father and mother of the said complainant, and of the title-deeds and writings relating to the messuages lands and tenements in the said bill mentioned, and that the same may be delivered up to the said complainant, this defendant doth demur in law, and for cause of demurrer showeth that no person or persons by the ancient and approved rule of this honorable court shall exhibit a bill of complaint in this honorable court against any other person or persons for a discovery of deeds and writings belonging to such complainant, and upon which if in his possession he might have remedy at law and pray relief relating thereto, unless such complainant or complainants shall at the time of exhibiting such bill make affidavit that he she or they have not such deeds and writings so sought after in his her or their custody or power; Wherefore and for that he said complainant hath not made affidavit of not having the deeds and writings in his custody or power so sought after by the said bill this defendant doth demur to such part of the said bill as aforesaid, and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to such part of the said bill as is so demurred unto.

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(19) *Ld. Red. Tr. Pl.* p. 54, 4th ed.; *Hook v. Dorman*, 1 Sim. & Stu. 227; and see note (2), *antea*, vol. i. p. 204.

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IV. *Demurrer to a bill of interpleader, for want of the usual affidavit that the plaintiff does not collude with any of the defendants (20).*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] to the whole of the said bill doth demur, and for cause of demurrer showeth that although the said complainant's said bill is on the face thereof a bill of interpleader, and prays that this defendant and the other defendants thereto may interplead together concerning the matters therein mentioned, and may be restrained by injunction from proceeding at law against the said complainant touching such matters, yet the said complainant has not annexed an affidavit to his said bill that he does not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this honorable court as this defendant is advised, to have been made and annexed to the said bill; Wherefore &c. [*as in form No. I. p. 74.*]

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\* V. *Demurrer to a bill of interpleader (21), for want of the necessary affidavit, and also for want of equity.*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] doth demur in law to the said bill, and for cause of demurrer showeth that although the said complainant's said bill is upon the face thereof a bill of interpleader, yet the said complainant hath not annexed to his said bill an affidavit that he doth not collude concerning such matters with any of the defendants thereto, which affidavit ought,

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(20) Ld. Red. Tr. Pl. 143; 1 Madd. Ch. Pr. 175.<sup>1</sup>

(21) The question in this cause was whether the bill was in fact a bill of interpleader; it was contended that it was not, the word 'interplead' not being used in the bill; the material part of the prayer was thus: 'And that the said defendants may *adjust and determine* between themselves to whom' &c.; the demurrer was allowed.

according to the rules of this court, as this defendant is advised, to have been made by the said complainant, and annexed to the said bill; And for further cause of demurrer this defendant further showeth that the said bill does not contain sufficient matter of equity whereupon this court can ground any decree in favor of the said complainant, or give the said complainant any relief against this defendant; Wherefore &c. [*as in form No. I. p. 74.*]

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\* VI. *Demurrer to a bill for the examination of witnesses de bene esse; the bill not alleging that an action has been commenced, or that there is any impediment to an action being brought, and an affidavit not being annexed to the bill (22).*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] and for cause of demurrer showeth that the said complainant in and by his said bill claims to be entitled to the estates and premises therein mentioned, and the said complainant by his said bill prays that he may be at liberty to examine his witnesses &c. yet the said complainant has not stated, nor does it appear in and by his said bill that any action at law has been commenced by him to establish his right, or that there was or is any impediment to any such action being brought by the said complainant, or that the several persons sought to be examined as witnesses or any of them are or is resident abroad, or are about to quit the kingdom, nor hath the said complainant by affidavit annexed to the said bill made oath that the several persons sought to be examined as witnesses or any of them are or is aged or infirm or any other circumstance which may render their testimony in danger of being lost; Wherefore &c. [*as in form No. I. p. 74.*]

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(22) See note (9), *antea*, vol. i. p. 465; *Philips v. Carew*, 1 P. Wms. 116, and note (z), *ib.* 6th ed.



\* VII. *Demurrer for multifariousness* (23).

The demurrer of &c.

This defendant by protestation &c. [see form No. I. p. 74.] doth demur to the said bill, and for cause of demurrer showeth that it appears by the said bill that the same is exhibited against this defendant and J. H., J. C., T.S. and W. T. for several and distinct matters and causes, in many whereof as appears by the said bill this defendant is not in any manner interested or concerned, by reason of which distinct matters the said plaintiff's said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together which do not depend on each other in the said bill, the pleadings orders and proceedings will in the progress of the said suit be intricate and prolix, and this defendant put to unnecessary charges in taking copies of the same, although several parts thereof no way relate to or concern him; for which reason and for divers other errors appearing in the said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

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(23) Ld. Red. Tr. Pl. 181, and note (b), *ibid.*; *Brookes v. Lord Whitworth*, 1 Madd. Rep. 86.88, and note (d), *ibid.*; *Salvidge v. Hyde*, 5 Madd. 138; S. C. on appeal, 1 Jac. R. 151. In *Rayner v. Julian*, 2 Dick. 677, a demurrer to a bill "for that it was multifarious" was over-ruled as informal.

An objection for multifariousness must be taken by demurrer, and cannot be made at the hearing of the cause; *Ward v. Cooke*, 5 Madd. 122; *Wynne v. Callander*, 1 Russ. 293, 7.

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\*VIII. *Part of a demurrer for multifariousness to a bill against several purchasers of parts of an estate (24).*

And for cause of demurrer showeth that the said bill is exhibited against this defendant and twenty other persons as defendants thereto, for several and distinct and independant matters and causes which have no relation to each other, and wherein or in the greater part whereof this defendant is in no way interested or concerned, and ought not to be implicated.

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\*IX. *Demurrer for want of equity and also for multifariousness to a bill for discovery and for a commission to examine witnesses abroad in relation to two actions at law commenced against the plaintiff in equity (25).*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] and for cause of demurrer showeth that the said complainants have not in and by their said bill shown any right or title to the discovery, or to the commission and injunction thereby sought; and for further cause of demurrer this defendant showeth that the discovery and commission by the said bill sought, relate to several distinct matters by the said bill alleged to have been pleaded by the said complainants to two several and distinct actions at law in the said bill alleged to have been commenced by this defendant against the said complainants, and which two several actions appear by the said bill to relate to several and distinct matters and to be founded on several and distinct causes of action, and such several and distinct matters so pleaded by the said complainants to the said two several actions ought not to have been joined together in one bill: Wherefore and for other good causes of demurrer apparent in the said bill &c. [*as in form No. I. p. 74.*]

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(24) See the authorities referred to in the preceding note.

(25) See *Shackell v. Macaulay*, 2 Sim. & Stu. 79; *Thorpe v. Macaulay*, 5 Madd. 218; and see also 5 Madd. p. 146.

\* X. *Demurrer for want of parties to a bill by a creditor of a testator who had died abroad* (26).

The demurrer of &c.

These defendants by protestation &c. [*see form No. II. p. 75.*] do demur to the said bill, and for cause of demurrer show that it appears by the said complainant's said bill that a personal representative of Robert Stewart the testator therein named, resident within the jurisdiction of the court, is a necessary party to the said bill, and yet that there is no personal representative of the said testator resident within the jurisdiction of the court a party to the said bill: Wherefore &c. [*as in form No. II. p. 75.*]

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XI. *Demurrer for want of parties.*

The demurrer of &c.

These defendants by protestation &c. [*see form No. II. p. 75.*] do demur to the said bill, and for cause of demurrer show that it appears by the said complainant's own showing in the said bill, that J. S. therein named is a necessary party to the said bill, inasmuch as it is therein stated, that N. M. the testator in the said bill named, did in his life-time by certain conveyances made to the said J. S. in consideration of £—, convey to him by way of mortgage certain estates in the said bill mentioned to have been devised for the purpose of paying the said testator's said debts and legacies, but yet the said complainant has not made the said J. S. a party to the said bill: Wherefore &c. [*as in form No. II. p. 75.*]

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(26) Ld. Red. Tr. Pl. 180, 4th ed. and note (s), *ibid.*; *Lowe v. Fairlie*, 2 Madd. Rep. 101. The demurrer need not point out the parties by name; it is sufficient if it points out who the individuals are by some description enabling the plaintiff to make them parties; 2 Madd. Ch. Pr. 293, 4; and see *Pyle v. Price*, 6 Ves. 780, 1; and 11 Ves. 369.

*Semble*, such demurrer should be to the whole bill; see *East India Company v. Coles*, reported in a note to *Blackburn v. Jepson*, 3 Swanst. 142, 3.

XII. *Demurrer to so much of a bill as sought a discovery of waste committed by the defendant, the plaintiff not having waived by his bill all penalties and forfeitures (27).*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] as to so much and such part of the said bill as seeks to have discovery from this defendant of any timber or young timber trees in the said bill suggested to have been since the death of Sir J. T. bart. this defendant's late father deceased in the said bill mentioned, felled or cut down on the estate in the said bill mentioned or any part thereof by this defendant, or by his directions, or as seeks to have any discovery of all or any sum or sums of money for which the same or any part thereof were or was sold by this defendant, doth demur, and for cause of demurrer showeth that by the known and settled rules of this honorable court no person ought to be compelled to set forth or discover any matter or thing which doth or may subject him to any pains penalties or forfeitures whatsoever; and therefore as the said discovery sought by the said complainant's said bill doth and may by the known law of this kingdom subject and make this defendant liable to several pains penalties and forfeitures, and which the said complainant hath not in and by his said bill waived as is usual in cases of the like nature to do, this defendant doth demur in law to so much and such parts of the said bill as pray the aforesaid discovery, and humbly demands the judgment of this honorable court whether he ought to be compelled to make any further or other answer than as aforesaid to such parts of the said bill as he hath so demurred unto.

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(27) See *Ld. Red. Tr. Pl.* 197, 4th ed.; *Madd. Ch. Pr.* vol. i. p. 214, vol. ii. p. 290.

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XIII. *Demurrer to so much of a bill as sought a discovery which might subject the defendants to a charge of compounding a felony (28),—accompanied by an answer to the other parts of the bill.*

The demurrer of the defendants C. D., G. H. and E. his wife to part, and their answer to other part of the bill of complaint of A. B. complainant.

As to so much of the complainant's bill as seeks to charge these defendants or any of them with the concealing or compounding the felony in the bill mentioned, or as seeks to compel any of these defendants to make any discovery touching the same or any of the matters relating thereto in the said bill suggested or alleged, these defendants by protestation not confessing or acknowledging any of the matters or things relating thereto in the said bill comprised, to be true in such sort manner and form as the same are therein alleged or set forth, these defendants do demur, and for cause of demurrer show that they ought not to be compelled to discover or set forth any matters whereby they may impeach or accuse themselves of an offence or crime for which they may subject themselves to fine or to corporal punishment; Wherefore and for divers other good causes of demurrer in the complainant's said bill of his own showing appearing, these defendants as to so much of the complainant's said bill as before is set forth do demur, and do demand the judgment of this honorable court whether they or any of them ought or shall be compelled to make any answer thereto other or otherwise than as aforesaid; and these defendants not waiving their said demurrer but wholly relying and insisting thereon, for answer to so much of the said bill as these defendants are advised is material or necessary for them or any of them to make answer unto, severally answering say they deny &c.

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(28) See 1 Madd. Ch. Pr. p. 214; *Claridge v. Hoare*, 14 Ves. 59; *Cartwright v. Green*, 8 Ves. 405, 2d. edit.

XIV. *Demurrer on the ground that the plaintiff does not appear by the bill to have proved the will of his testator (29).*

The demurrer of &c.

These defendants by protestation &c. [*see form No. II. p. 75.*] do demur to the said bill, and for cause of demurrer show that the scope and end of the said complainant's bill is to be relieved touching several sums of money by the said bill supposed to be due from these defendants to one A. B. deceased in the said bill named, which the said complainants would or seek by their said bill to claim as executors to the said A. B., and yet they have not alleged in or by their said bill that they have proved the will of the said A. B. (if any such was made) or otherwise taken upon themselves the burthen or execution thereof, or any ways entitled themselves unto her personal estate and to sue for the same : Wherefore &c. [*as in form No. II. p. 75.*]

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\* XV. *Demurrer on the ground that the plaintiff had not proved his testator's will in the proper Ecclesiastical Court (30).*

The demurrer of &c.

This defendant by protestation &c. [*see form No. I. p. 74.*] doth demur to the said bill, and for cause of demurrer sheweth that according to the complainant's own showing in his said bill of complaint it appears that C. R. the testator in the said bill named died possessed of *bona notabilia* out of the diocese of the Bishop of Chichester, and particularly of *bona notabilia* in the diocese of the Bishop of London which is in the province of the see of Canterbury, and that it appears by the said complainant's said bill that the said complainant hath proved the said testator's will in the said bill mentioned in the Consistory Court of the Bishop of Chichester only : Wherefore &c. [*as in form No. I. p. 74.*]

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(29) See *Ld. Red. Tr. Pl. 155*, 4th ed.

(30) See *Comber's Case*, 1 P. Wms. 766 ; *Tourton v. Flower*, 3 P. Wms. 370, 6th ed.

XVI. *Demurrer by the wife and committee of the person of a lunatic, to so much of a bill as sought to perpetuate the testimony of witnesses to the alleged will of the lunatic (31), accompanied by her Answer to the other parts of the bill.*

The several demurrer and answer of B. C. wife of T. C. a lunatic, one of the defendants to the bill of complaint of S. E. complainant.

This defendant by protestation &c. [*see form No. I. p. 74.*] as to so much of the said bill as seeks to have the witnesses to the alleged will of the said T. C. this defendant's said husband examined and their testimony recorded in this honorable court in order to the perpetuating thereof, this defendant doth demur, and for cause of demurrer showeth that the said T. C. at the time of the exhibiting of the said bill was and still is living, and that the witnesses to the said alleged will of the said T. C. ought not to be examined to prove the same nor ought their testimony to be recorded during the life of the said T. C., and for that the said complainant hath not any right or title by or under the said will until the said T. C.'s death: Wherefore and for divers other errors and imperfections good causes of demurrers appearing in the said bill this defendant doth demur to such parts of the said bill as aforesaid: And as to the residue of the said bill this defendant not waiving her said demurrer but relying thereon, and saving and reserving to herself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors uncertainties and insufficiencies in such residue of the said bill contained, doth answer and say she hath heard and believes it to be true that the said T. C. did several years ago but when exactly this defendant cannot set forth, become disordered in his mind and hath ever since been and still is incapable of managing himself or his affairs, and that the said complainant did on or about the — day of — prefer a petition to the then Lord High Chancellor of Great Britain praying that a commission might issue to inquire of the lunacy of the said T. C.; And this defendant further answering saith that a commission issued accordingly, and that such inquisition was taken thereon as in the said bill is for that purpose mentioned and set

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(31) See *Ld. Red. Tr. Pl. p. 156; Sackville v. Ayleworth, 1 Vern. 105; 6 Ves. 259, 260.*

forth, and that the said T.C. doth still continue and is a lunatic; but this defendant for greater certainty craves leave to refer to the records of the said commission and inquisition; And this defendant further saith she admits it to be true that after the said T. C. was found a lunatic as aforesaid, the care and custody of his person was committed to this defendant, and the care and management of his estate was committed to W.C. in the said bill named, and that the said T. C. her husband is still living: And this defendant doth deny all manner of combination and confederacy in the said bill charged, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf sustained.

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\* XVII. *Demurrer as to so much of the discovery and relief sought by the bill with respect to certain part of the premises therein mentioned, that the plaintiff's remedy is at law (32); and with respect to other part of the premises, that he has shown no title thereto; and Plea in bar as to so much of the bill as sought to set aside the conveyance of other part of the premises, of the indentures of conveyance by lease and release for a valuable consideration, supported by an Answer denying fraud or any undue influence having been used.*

In Chancery.

The demurrer, plea, and answer of A. F. one of the defendants to the bill of complaint of J. B. complainant.

Demurrer,

This defendant by protestation &c. [*see form No. I. p. 74.*] as to so much of the said bill as seeks to compel this defendant to account with the said complainant for the rents and profits of all or any of the estates therein mentioned (except of the premises in Mary Street therein alleged to have been purchased by T. R. one of the defendants to the said complainant's bill) received by her, or which but for her wilful default she might have received, and also as to so much of the said bill as seeks to compel this defendant

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(32) See *Loker v. Rolle*, 3 Ves. 7, 2d edit.; *Crow v. Tyrrell*, 3 Madd. 132; and note (1), *antea*, vol. i. p. 204.



to deliver up to the said complainant or unto such person or persons as she should appoint the possession of all or any of the said estates and premises in the said bill mentioned (except of the said premises therein alleged to have been purchased by the said defendant T. R.), and to so much of the said bill as seeks to compel this defendant to deliver up to the said complainant all and every the title-deeds evidences and writings in her custody or power relating to all or any of the said estates and premises in the said bill mentioned (except the said premises therein alleged to have been purchased by the said T. R.), this defendant doth demur thereto; And this defendant as to the discovery and relief sought by the said bill (save so much thereof as relates to the said premises therein alleged to have been purchased by the said T. R., and so much thereof as relates to the premises in the said bill mentioned to be situate at S. in the county of D.), for cause of demurrer showeth that the said complainant can have an effectual and complete remedy in a court of law; and for further demurrer in this behalf this defendant as to so much of the said discovery and relief as relates to the said premises in S. aforesaid, for cause of demurrer saith that the said complainant hath not by the said bill shown that he is entitled to the said estate and premises at S. or any part thereof, or to the rents thereof or of any parts thereof, or to any of the title-deeds evidences and writings relating thereto; Wherefore and for divers other good causes of demurrer appearing in the said bill this defendant prays the judgment of this honorable court whether she shall be compelled to make any answer to such parts of the said bill as she has hereinbefore demurred to; And this defendant not waiving her said several demurrers but wholly relying thereon, doth as to so much of the said bill as seeks to have the conveyance of the said premises therein mentioned to be situate at the corner of Mary Street set aside as having been obtained by undue means, and to have the same delivered up to the said complainant to be cancelled, and to compel this defendant to account with the said complainant for the rents and profits of the said last-mentioned premises received by her, or which but for her wilful default she might have received, and also as to so much of the said bill as seeks to compel this defendant to deliver up to the said complainant or unto such person or persons as he should appoint the possession of all and singular the last-mentioned premises, and to deliver up to the said complainant all and every the title-deeds evidences and writings in her custody or power relating thereto, pleads thereto, and for plea saith that by an indenture of bargain and sale bearing date the 10th day of July in the year 1799, and made between the said complain-

as to the discovery and relief sought, (save as to the premises purchased by T. R., and the premises situate at S.,)

for that plaintiff's remedy is at law,

and as to the premises in S.,

that plaintiff has not shown that he is entitled thereto;

Plea in bar as to so much of the bill as seeks to set aside the conveyance of other premises, and to compel the defendant to account for the rents, and to deliver up the possession of the premises and of the title-deeds,

of a conveyance by lease and release to T. R. and W. F. in fee

as tenants in  
common.

ant and A. his wife of the one part, and the said defendant T. R. and W. F. in the said bill named of the other part, he the said complainant and his said wife in consideration of the sum of 10s. to them therein mentioned to be then paid by the said T. R. and W. F. did bargain and sell the last-mentioned premises with the appurtenances unto the said T. R. and W. F., To hold the same unto the said T. R. and W. F. their executors administrators and assigns from the day next before the day of the date of the same indenture for the term of one whole year from thence next ensuing; And by a certain indenture of release bearing date the 17th day of the same month of July in the year 1799, and made between the said complainant and his said wife of the one part, and the said T. R. and W. F. of the other part; after reciting (amongst other things) that disputes had arisen between the said complainant and the said T. R. and W. F. concerning the premises, for ending whereof the said T. R. and W. F. had agreed to give to the said complainant £100 on condition that the said complainant and A. his wife would grant bargain sell release and confirm the said premises unto the said T. R. and W. F. their heirs and assigns, to which the said complainant had consented, he the said complainant and his said wife, in consideration of the sum of £100 then to them paid by the said T. R. and W. F., did grant bargain sell release and confirm unto the said T. R. and W. F. and their heirs the said last-mentioned premises with the appurtenances, To hold the same unto the said T. R. and W. F. their heirs and assigns as tenants in common and not as joint tenants, To the use of the said T. R. and W. F. their heirs and assigns; by virtue of which indenture all the estate right title and interest of the said complainant in and to the said last-mentioned premises became as this defendant is advised, and was well and effectually conveyed released and assured unto and to the use of the said T. R. and W. F. their heirs and assigns; And this defendant doth aver to the best of her knowledge information and belief that the said sum of £100 was actually paid by the said T. R. and W. F. to the said complainant, and that neither the said T. R. nor the said W. F. prevailed upon the said complainant by fraud or misrepresentation or any undue means to execute the said indentures of bargain and sale and release or either of them; All which last-mentioned matters and things this defendant doth plead in bar to so much of the said bill as is hereinbefore pleaded to; And this defendant humbly prays the judgment of this honorable court whether she ought to make any further answer to so much of the said bill as is hereinbefore pleaded to; And this defendant not waiving her said several demurrers and plea but wholly relying and insisting thereon, for answer to so much

Averments that  
the consideration  
£100 was paid,

and that neither  
T. R. nor W. F.  
used fraud or  
undue means;

of the said bill as this defendant is advised is material or necessary for her to make answer unto in aid of her said plea, answereth and saith she denies to the best of her knowledge remembrance information and belief that the said T. R. and W. F. or either of them ever took an undue advantage of the said complainant's distress, or prevailed upon the said complainant by fraud misrepresentation or any undue means to sell and dispose of his right and interest in the said last-mentioned premises or any part thereof, or to execute the said indentures of bargain and sale and release or either of them; And this defendant further answering saith she hath been informed and believes it to be true that the said sum of £100 was actually and *bonâ fide* paid by the said T. R. and W. F. in equal moieties to or to the use of the said complainant, and that the same was considered by the said T. R. and W. F. at the time of the execution of the said several indentures of bargain and sale and release to be a full and adequate consideration for the purchase of all the right and interest of the said complainants in and to the last-mentioned premises and every part thereof.

Answer in aid of plea, denying that T. R. and W. F. took any undue advantage, or prevailed upon plaintiff by fraud to sell his interest in the premises, or to execute the deeds; believes that the consideration was paid by T. R. and W. F. to the plaintiff, and was at the time considered a full and adequate consideration.

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XVIII. *Demurrer by husband and wife to so much of the bill as sought to set aside a testator's will, or to restrain proceedings at law, that it appeared by the bill that the husband proved the will in the Prerogative Court, that such court has exclusive jurisdiction, and that no equity is shown to stay the proceedings at law;—Plea by the husband as to so much as sought a distribution of the testator's personal estate, that he made a will bequeathing his residuary estate to the husband, and appointed him executor, and that he has proved the will;—Answer by both defendants to the residue of the bill.*

The joint and several demurrer of S. N. and E. his wife to part, and the plea of the said S. N. to part, and the joint and several answer of the said S. N. and E. his wife to other part of the bill of complaint of M. B. W. T. and J. M. and S. his wife, complainants.

These defendants S. N. and E. his wife, by protestation &c. [see *Demurrer by S. N. and wife as to so much of the bill as seeks re-* form No. II. p. 75.] as to so much of the said bill as seeks to set aside or impeach or have any relief against the will of R. R. in the

lief against the will of R. R., that it appears that S. N. proved the same in the Prerogative Court, and that such court has exclusive jurisdiction;

and that there is no equity shown to stay proceedings at law by S. N. against W. T.

Plea by S. N. as to so much as seeks to have distribution of R. R.'s personal estate, that R. R. made a will bequeathing his residuary personal estate to S. N. and appointing him executor; and that he proved the will in the Prerogative Court.

said bill named as to the personal estate of the said R. R. or that seeks a discovery from these defendants or either of them in relation to the said will, or that prays an injunction against this defendant A. N. to stop his proceeding at law against the said W. T. these defendants do demur thereunto, and for cause of demurrer show that it appears by the complainants' own showing that this defendant S. N. hath proved the said will of the said R. R. in the Prerogative Court of the Archbishop of Canterbury, and these defendants are advised that the probate of wills relating to estates and particularly relating to personal estates do properly belong to the Ecclesiastical Courts of this realm, and that the same ought not to be called into question in this honorable court; And for further cause of demurrer these defendants show that there is not as they are advised any matter or thing set forth in and by the said bill as a foundation of equity for this court to interpose in relation to the action at law commenced by this defendant S. N. against the said W. T. but what is properly cognizable at law, and that the said complainant W. T. may have the same or equal benefit upon a trial at law if the same is true; for which reason and for divers other causes these defendants do demur to so much of the said bill as aforesaid, and humbly pray the judgment of this honorable court whether they shall make any further or other answer thereto; And as to so much of the said bill as seeks to have a distribution of the personal estate or effects of the said R. R. according to the statute of distribution of intestates' estates, or that seeks an account or discovery of or from this defendant S. N. of the personal estate of the said R. R. this defendant S. N. doth plead thereunto, and for plea this defendant saith that the said R. R. did in his life-time on or about the — day of — in the year of our Lord — as this defendant believes duly make and publish his last will and testament in writing, and thereby after giving several legacies therein particularly mentioned, gave and bequeathed all the rest and residue of his real and personal estate unto this defendant to hold to him his heirs and assigns for ever, and of the said will made this defendant sole executor; and that this defendant also after the death of the said testator proved the said will in the Prerogative Court of the Archbishop of Canterbury, as by the probate thereof under the seal of the said court now in the custody or power of this defendant ready to be produced as this honorable court shall direct, and to which this defendant craves leave to refer, doth more fully and at large appear; All which matters and things this defendant S. N. doth aver and is ready to prove as this honorable court shall direct, and doth plead the same in bar to so much of the said bill as for that purpose is hereinbefore mentioned, and humbly craves the judgment of this honorable

court whether he shall make any further or other answer thereto ; Answer to the residue of the bill. And as to so much of the said bill as these defendants have not before respectively demurred or pleaded unto, these defendants in no sort waiving the benefit of the said demurrer and plea or either of them but wholly relying and insisting thereon, these defendants for answer to the residue of the complainant's said bill or to so much thereof as these defendants are advised is material or necessary for them or either of them to make answer unto, these defendants, each speaking for him and herself, and not the one for the other, they these defendants do severally answer and say as follows &c.

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\* XIX. *Demurrer to an amended bill, the plaintiff's title to redeem having been obtained after the filing of the original bill and the answer to it* (33).

The demurrer of &c. (34).

This defendant by protestation &c. [ *see form No. I. p. 74.* ] doth demur thereto, and for cause of demurrer saith that the indentures of lease and release in the said bill mentioned to bear date respectively the 15th and 16th days of July 1816, the indenture of release purporting to be made between the said complainant W. M. of the one part and the said complainants J. P. and R. P. of the other part, and to be a conveyance of the equity of redemption of the premises therein mentioned and by the said bill sought to be redeemed, appear by the said bill to bear date after the filing of the original bill of complaint of which the said bill of the said J. P., R. P., and W. M. purports to be an amended bill ; Wherefore and for divers other good causes of demurrer appearing in the said bill of the said J. P., R. P. and W. M., this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill of the said J. P., R. P., and W. M., and humbly prays to be hence discharged with his reasonable costs in this behalf sustained.

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(33) See *Pilkington v. Wignall*, 2 Madd. Rep. 240, 4 ; and *Ld. Red. Tr. Pl.* p. 207, 4th edit. ; see also 2 Madd. Ch. Pr. 374, 5.

This demurrer was drawn according to a precedent of a similar demurrer drawn by Lord Redesdale when at the bar, and was allowed ; it was held not to be a speaking demurrer ; it only stating matter appearing in the bill, not matter out of it.

(34) See *Smith v. Bryon*, 3 Madd. 428, 9 ; and note (b), antea, p. 2.

\* XX. *Demurrer for want of equity to a supplemental bill* (35).

The demurrer of &c.

These defendants by protestation &c. [see form No. II. p. 75.] do demur in law to the said supplemental bill of complaint, and for cause of demurrer show that the said supplemental bill of complaint doth not contain any matter to entitle the said complainant to any such discovery from these defendants or to any such relief against them as is sought and prayed in and by the said supplemental bill; Wherefore these defendants do demur thereto, and pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said complainant's said supplemental bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

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\* XXI. *Demurrer to a bill of review and supplemental bill, on the ground that there are no errors in the decree, and that the leave of the court was not first obtained* (36).

These defendants by protestation &c. [see form No. II. p. 75.] do demur in law thereto, and for cause of demurrer show that there are no errors in the record and premises and in the decree of the — day of — in the said bill of review and supplemental bill mentioned, nor is there any sufficient matter alleged in the said bill of review and supplemental bill to entitle the said complainant to reverse the said decree; and for divers other errors and defects appearing in the said bill of review and supplemental bill, these defendants do demur in law thereto; And these defendants for further cause of demurrer humbly show that by an order of this honorable court bearing date the 17th October in the fifteenth year of his

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(35) See *Adams v. Dowding*, 2 Madd. Rep. 53.

(36) See *Ld. Red. Tr. Pl.* p. 84. 203, 4, 4th ed.; 2 Madd. Ch. Pr. 542.

present Majesty's reign, It is ordered, amongst other things, that no supplemental or new bill in nature of a bill of review grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of the court first obtained for that purpose; Wherefore and for that the said complainant doth not allege by the said bill of review and supplemental or new bill that he had first obtained leave of this court for exhibiting the said bill of review and supplemental or new bill, these defendants demur in law thereto, and humbly pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said complainant's said bill of review and supplemental or new bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

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## CHAPTER XI.

## PLEAS (1).

I. *Plea of alien enemy* (2).

The plea of — defendant to the bill of complaint of — complainant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's said bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereunto, and for plea saith that the said complainant is an alien born in foreign parts, that is to say, in the kingdom of Spain, out of the allegiance of our Lord the now King, and under the allegiance of a foreign Sovereign, that is to say, of the King of Spain, an enemy to our Lord the King; and that the said complainant before and at the time of his exhibiting his said bill of complaint against this defendant was and still is an enemy of our Lord the now King, and an inhabitant of C. under the government of the said King of Spain

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(1) As to the form and requisites of pleas in general, see Ld. Red. Tr. Pl. 294, 300, 4th edit.; Beames on Pleas, p. 7, 32, 42; 2 Madd. Ch. Pr. p. 297.

A plea may be to the *whole* bill, or to *part* only. If a plea does not go to the whole bill it must clearly and precisely express to what part of the bill the defendant pleads; if the plea is general with an exception of matters after mentioned and is accompanied by an answer, the plea is bad; but if the exception is clearly stated and does not require a reference to any other part of the record to make it intelligible, it is sufficient; see the authorities above referred to, see also *Howe v. Duppa*, 1 Ves. & Bea. 514.

A plea must not contain unnecessary averments; *Corh v. Wilcock*, 5 Madd. 330.

In what cases a plea is required to be put in on oath, see Ld. Red. Tr. Pl. p. 301; Beames on Pleas, 316; Ord. Ch. ed. Beames, 26, 7. 19 Ves. 81, 2.

(2) See Ld. Red. Tr. Pl. p. 229, 4th edit.; Beames on Pleas, p. 112, 254, and p. 329, where a form of a similar plea is inserted; see also *Evans v. Richardson*, 3 Mer. 469.



and adhering to our said Lord the King's enemies; All which matters and things this defendant doth aver to be true and pleads the same to the whole of the said bill and humbly demands the judgment of this honorable court whether he ought to be compelled to make any answer to the said bill of complaint, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

J. L.

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II. *Plea that the defendant is not the deceased's personal representative as alleged in the bill* (3).

The plea of &c.

This defendant by protestation &c. [ *see form No. I. p. 94.* ] to all the discovery and relief sought and prayed by the said complainant's said bill he this defendant doth plead, and for plea saith that he this defendant is not the executor or administrator or the legal personal representative of the said A. B. as in the said bill alleged, which said representative or representatives ought to be made party or parties to the said complainant's said bill as this defendant is advised; All which matters and things this defendant avers to be true and pleads the same to the said bill, and humbly demands the judgment of this honorable court &c.

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\* III. *Plea to a bill by assignees of a bankrupt, that the same was filed without the consent of the creditors* (4).

The plea of &c.

This defendant by protestation &c. [ *see form No. I. p. 94.* ] and for plea saith that by the statute made and passed in the 5th year of the reign of his Majesty King George the Second, intituled,

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(3) See *Ld. Red. Tr. Pl. p. 220, 234*; *Beames on Pleas, p. 130, 256.*

(4) See *Ocklestone v. Benson, 2 Sim. & Stu. 265.*

'An act to prevent the committing of frauds by bankrupts' (5), it is provided that no suit in equity shall be commenced by any assignee or assignees without the consent of the major part in value of the creditors of such bankrupt who shall be present at a meeting of the creditors pursuant to notice to be given in the London Gazette for that purpose; And this defendant doth aver that the said bill was filed by the said complainants as the assignees of the estate and effects of the said bankrupt T. C. without the consent of the major part in value of the creditors of the said bankrupt present at a meeting of the creditors pursuant to notice given in the London Gazette for that purpose; And this defendant doth therefore plead the matters aforesaid &c.

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#### IV. *Plea of bankruptcy of the plaintiff* (6).

##### The plea of &c.

This defendant by protestation &c. [*see form No. I. p. 94.*] doth plead to the said bill, and for plea saith she hath been informed and believes that the said complainant and J. B. the younger his son did for some years before the month of—— carry on the business of merchants as copartners together at L. in the county of Y.; And that they were before and on &c. jointly indebted on account of the partnership dealings to many persons to a large amount in the whole and particularly to H. W. in the sum of £——; And that the said complainant and the said J. B. the younger were before and on &c. severally indebted on their respective separate accounts to many persons to a large amount in the whole; And that the said complainant and the said J. B. or one of them on their said partnership account before the said &c. committed one or more act or acts of bankruptcy; And that a commission of bankruptcy under the great seal of Great Britain was on the said —— day of —— duly

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(5) C. 30. s. 38; and see the 6 Geo. 4. c. 16. s. 88, and note (1), *antea*, vol. i. p. 111; Eden's Bank. Laws, p. 342.

(6) See *Ld. Red. Tr. Pl.* p. 232; Beames on Pleas, p. 118, 254; a plea of bankruptcy must state distinctly and in succession the facts upon which the bankruptcy rests; *Carleton v. Leighton*, 3 Mer. 667.

A plea that the plaintiff had taken the benefit of an act for the relief of insolvent debtors is to be found in 16 Ves. 467, 2d ed., *De Minckwitz v. Udney*.

issued against them under the names of J. B. the elder and J. B. the younger on the petition of the said H. W., and that they were thereupon by the major part of the said commissioners named in the said commission soon after duly found and declared to be bankrupts as copartners; And that the said H. W. &c. were duly chosen assignees of the estate and effects of the said complainant and his said son under the said commission; And that the usual assignment was made by the major part of the said commissioners named in the said commission unto the said H. W. &c. of the personal effects of the said complainant and his said son and each of them; And that by indenture of bargain and sale duly enrolled in this honorable court in the year —, the major part of the commissioners named in the said commission of bankruptcy also made the usual conveyance unto the said assignees of all the real estate of the said complainant and his said son and each of them; And that the complainant shortly after the issuing of the said commission of bankruptcy obtained the usual certificate from — in number and value of the joint creditors of him and of his son also and also of the separate creditors of him the said complainant who proved their debts under the said commission of bankruptcy and also from the major part thereof from the commissioners named in the said commission; And that the said complainant duly conformed himself to the several laws made and in force concerning bankrupts; And this defendant hath also been informed and believes that such certificate was duly confirmed by the Right Honorable the late Lord Chancellor; And this defendant for further plea saith she believes that the said commission of bankruptcy hath never been superseded but that the same is now remaining in full force, and therefore as the right claimed by the said bill to the estates therein mentioned and to the rents and profits appears by the said bill to have accrued, and if the same is just and well founded did really accrue long before the date and issuing forth of the said commission, this defendant is advised that the said complainant's right and interest to and in the said estate and the rents and profits thereof, was at the time of the filing of the said bill and is now vested in the said assignees under the said commission of bankruptcy for the benefit of them and the other creditors of the said complainant and his said son jointly and of the said complainant alone; All which matters and things this defendant doth aver to be true, and she pleads the same to the whole of the said bill, and humbly demands the judgment of this honorable court whether she ought to be compelled to make any further or other answer thereto.

\*V. *Plea by bankrupts of their certificate to the whole of the plaintiff's bill (brought in respect of a demand arisen previously to their bankruptcy), excepting only as to the allegation in the bill that the bankrupts claimed an interest in the matters in question, which by answer and disclaimer accompanying the plea they disclaimed, setting forth a release executed to their assignees of all right and interest in their surplus estate (7).*

The plea of &c.

These defendants respectively by protestation &c. [see form No. 1. p. 94.] do plead to so much of the said bill as seeks that these defendants may make good to the said complainant the loss and damage alleged to have been sustained by him by the detention of the four hundred and thirty-four casks of pearl ashes in the said bill of complaint in that behalf mentioned, and that all necessary directions might be given to ascertain the amount of such loss; and for plea thereto, and to all the discovery sought from these defendants with relation thereto or to any other matters in the said bill contained, except as to the question whether these defendants or one and which of them have not or hath not or do not or doth not claim some and what interest in the matters in question in this cause, these defendants say that by a statute or act of parliament made and passed in the 5th year of the reign of his late Majesty King George 2. and afterwards made perpetual, intituled "An act to prevent the committing of frauds by bankrupts," it is amongst other things enacted that all and every person and persons so become or to become bankrupts as in such act aforesaid, who should within the time thereby limited surrender him her or themselves to the acting commissioners named and authorized in or by any commission of bankrupt awarded or to be awarded against him her or them as in and

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(7) See *De Tastet v. Sharpe*, 3 Madd. 51; the plaintiff's bill was held analogous to the remedy by action at law for money had and received, and considered as brought in lieu of that action, and consequently that the certificate was a bar.

A plea of bankruptcy of the defendant is good where the decree sought is *ad rem* and not a personal demand, notwithstanding the commission has issued *after the filing of the bill*; *Turner v. Robinson*, 1 Sim. & Stu. 3.

by the said act directed, should have certain allowances in the said act in that behalf particularly mentioned out of the net produce of their estate, and every such bankrupt should be discharged from all debts by him or them due and owing at the time that he she or they did become bankrupt; and that in case any such bankrupt should be afterwards arrested prosecuted or impleaded, such bankrupt should and might plead in general that the cause of such action or suit did accrue before such time as he she or they became bankrupts, and might give the said act and special matter in evidence: And these defendants do aver that they did respectively become bankrupt since the period in the said act referred to for the commencement of the operation and effect thereof, and that a commission of bankrupt under the great seal of Great Britain, bearing date at Westminster, the 1st day of October 1812, was awarded and issued against them together with G. Sharpe the elder deceased their late father and copartner in trade, under which commission they these defendants and the said late G. Sharpe the elder respectively were duly found and adjudged bankrupt, and that these defendants and each of them did within the time limited for that purpose by the said act, surrender themselves to the acting commissioners named and authorized in or by the said commission of bankrupt so awarded against them and the said G. Sharpe the elder, and that these defendants and each of them did in all things conform as in and by the said act is directed: And these defendants do aver that the said cause of action or suit in the said complainant's bill set up against these defendants and each of them, did accrue before such time as these defendants respectively became bankrupt; And therefore these defendants severally crave the benefit of the said act and plead the same in bar to the relief and discovery (except as before excepted) so sought against them respectively by the said bill of complaint, and pray the judgment of this honorable court whether they or either of them shall be compelled to make any other or further answer to the said complainant's said bill of complaint, save only as to the part thereof above excepted out of this their plea; And these defendants not in any sort waiving their said plea, do for answer to such said excepted point or question put to them in the said bill of complaint and not covered by their said plea, or to so much of such question as they are advised is material or necessary for them to make answer unto, say that by a certain deed-poll under the hands and seals of these defendants and the said late G. Sharpe the elder deceased, dated the 26th day of July 1813, these defendants and the said late G. Sharpe the elder, in consideration of 5s. paid them respectively by the assignees of their estate, released to

the said assignees all surplus allowance right title interest benefit claim and demand which these defendants and the said G. Sharpe the elder deceased or any or either of them could or might have claim challenge or demand in to or out of their estate, or against the said assignees personally in respect thereof both at law and in equity; And therefore in case these defendants ever had claimed or pretended to have or claim any interest in the matters in question in this suit, such claim and interest would as they are advised be now extinguished or transferred wholly to their said assignees: And these defendants further severally say they do not know or believe that since their said bankruptcy they or either of them have had claimed or pretended to have or claim, any interest in the matters in question in this cause, and they do respectively disclaim all right title and interest therein and in every part thereof.

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\* VI. *Plea of a fine and non-claim to a bill for an account and for a discovery of the defendants' title, accompanied by an answer to part of the bill* (8).

The plea and answer of Dame Mary Every, Daniel Parker Coke, William Hoskins, and John Fowler, to the bill of complaint of Allen Butler, complainant.

These defendants by protestation &c. [*see form No. I. p. 94.*] as to so much of the said bill as seeks to compel them to set forth an

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(8) This is a correct copy of the plea (as amended) allowed by Lord Chancellor Thurlow in *Butler v. Every*, 1 Ves. jun. 136, 2d ed., 3 Bro. Ch. Ca. 80, 81, S. C. It is inserted in the 5th volume of 'The Property Lawyer,' p. 126, (from a MS. in the possession of the editors of that work) in a note to a case of *Leigh v. Leigh*, where all the cases will be found collected. A similar plea in *Dobson v. Leadbeater*, 13 Ves. 230, was over-ruled; an averment of actual seisin being necessary, the words '*being thereby seised*,' being argumentative. See further Ld. Red. Tr. Pl. p. 253, 4th ed.; Beames on Pleas, p. 183.

In *Leigh v. Leigh*, cited supra, the plea stated that the defendant at the time of levying the fine *was seised in possession*, it was objected that such averment was not equivalent to stating that he was seised of an estate of *freehold*; Sir A. Hart, V. C. considered the plea as sufficient in point of form; (it was however over-ruled upon the ground that a fine cannot be pleaded to a bill filed merely to prevent a satisfied term being set up on ejectment.)

account of the rents and profits of the messuages farms lands tenements and hereditaments in the said bill mentioned or any part thereof, late the estate of Sir John Every bart. the intestate in the said bill named, and of which Sir Edward Every obtained the actual possession as hereinafter mentioned, and as to so much of the said bill as prays that possession of such messuages &c. may be delivered up to the said complainant, or that any title-deeds or writings relating thereto may be delivered up to him, or that an account may be taken of any rents or profits of the said messuages &c. or that these defendants or any of them may pay to the said complainant any sums of money on account of such rents and profits, or that the said complainant may have any other relief touching such messuages &c., and as to so much of the said bill as seeks to discover in what manner or by what pedigree the said Sir Edward Every is the heir at law of the said Sir John Every these defendants do plead in bar, and for plea say that after the death of the said Sir John Every baronet, which happened about June 1779, Edward Every afterwards Sir Edward Every, baronet, in the said bill named, *entered* upon the said messuages farms lands tenements and hereditaments hereinafter particularly mentioned, *claiming the same as heir at law* of the said Sir John Every, and was in the *actual possession* thereof and in the receipt of the rents and profits thereof; and that the said Sir Edward Every *being thereby seised* and in the actual possession of all and singular the messuages farms lands tenements and hereditaments aforesaid, in Michaelmas Term in the 20th year of the reign of his present Majesty, *a fine sur conuzance de droit come ceo qu'il a de son done* was levied in due form of law before the justices of the court of Common Pleas at Westminster, between Daniel Parker Coke esq. demandant, and the said Sir Edward Every baronet deforciant, of all the said messuages farms lands tenements and hereditaments, by the description of the manors of Egginton, Newton Solney otherwise Newton Soolney, and Hardwick, with the appurtenances, and of sixty messuages, thirty cottages, ninety gardens, fifty orchards, one thousand acres of land, six hundred acres of meadow, one thousand acres of pasture, one thousand five hundred acres of wood, six hundred acres of furze and heath, two hundred acres of moor, common of pasture for all cattle, free fishing in the waters of Trent and Dove, courts leet, court baron, and view of frankpledge, and whatsoever to view of frankpledge belongeth, with the appurtenances in Egginton, Newton Solney otherwise Newton Soolney, Hardwick, and Ripton, and also of the rectories of Hardwick and Newton Solney, with the appurtenances, and likewise of all and all manner of tithes whatsoever yearly arising

growing, or renewing in Egginton, Newton Soolney, and Hardwick aforesaid, and moreover of the advowson of the churches of Newton Solney and Egginton, upon which fine proclamations were duly made according to the form of the statute in that case made and provided, and the last proclamation thereon was duly made in Trinity Term in the 20th year of the reign of his present Majesty, as by such fine and the proclamations thereupon made and remaining of record in the said court of Common Pleas may more fully appear: And these defendants for plea further severally say that the said estates hereinbefore particularly mentioned, and of which such fine was levied by the said Sir Edward Every as aforesaid, and such proclamations thereupon made, are all the messuages farms lands tenements or hereditaments of which the said Sir John died seised of any estate of inheritance either in fee-simple or otherwise: And these defendants for plea further severally say that the said Sir Edward Every before and after the levying of such fine, and until his death, and after the death of the said Sir Edward Every, these defendants Daniel Parker Coke, Abraham Hoskins, and John Fowler, claiming under him, have been and now are in the peaceable possession of the said messuages and premises and every part thereof without any lawful entry thereon or on any part thereof by the said complainant or any person whomsoever within five years after the proclamation so last made as aforesaid or at any time since, and without any suit at law or in equity touching or concerning the same messuages and premises or any part thereof prosecuted by the said complainant within five years after proclamation so last made as aforesaid until the filing of the said complainant's bill; And these defendants do aver that the said complainant was not at the time of such fine levied and proclamation thereupon made as aforesaid or at any time afterwards under any legal disability whatsoever; And these defendants do aver that the right of the said complainant, if any he ever had in the said messuages and premises or any part thereof, accrued before the levying of such fine and five years and upwards before the filing of the said bill; All which matters and things these defendants do plead in bar to so much of the said complainant's bill as aforesaid, and do pray the judgment of this honorable court whether they ought to be compelled to make any further or other answer thereto; And as to so much and such parts of the said bill as they these defendants have not pleaded unto, they these defendants in no sort waiving the benefit of their said plea but wholly relying and insisting thereon, these defendants for answer thereto say they admit it to be true that Sir John Every bart. above mentioned was in his life-time and at his death seised or well entitled in



fee-simple in possession of and to the several estates above mentioned, and that being so seised or entitled he the said Sir John Every died about the time in the said bill of complaint set forth a widower intestate and without issue; but they these defendants deny that to their knowledge or belief the said Sir John Every died without leaving any heir at law of the male line or on the part of his father, on the contrary they these defendants say that they believe that &c.

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\* VII. *Plea by an heir at law that he had no lands by descent, accompanied by an answer admitting that he is heir at law.*

The plea of &c.

This defendant by protestation &c. [*see form No. I. p. 94.*] as to so much of the said bill as seeks any relief from or any discovery from him (save and except whether he is the heir at law of J. C. deceased in the bill named) this defendant doth plead in bar thereto; And for and by way of plea saith that he hath not nor hath any person or persons in trust for him, nor on the day of filing the bill nor at any time before or since had any lands tenements or hereditaments by descent coming from the said J. C. deceased this defendant's father; And this defendant not waiving his said plea but wholly relying and insisting thereon for answer to the residue of the said complainant's bill not hereinbefore pleaded unto, or to so much thereof as this defendant is advised is material or necessary for him to make answer unto, saith he admits he is the heir at law of the said J. C. deceased.

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- \* VIII. *Plea to an ejectment bill negating the averment in the bill as to their being outstanding leases* (9).

The plea of &c.

These defendants respectively by protestation &c. [*see form No. I. p. 94.*] for plea to the said bill say and aver that James Armitage in the said bill named was at the time of his death seised in fee in possession of all the real estates whereof or whereto he was then seised or entitled; And these defendants do aver that none of the said real estates of the said James Armitage were or was let on lease by the said James Armitage to any person or persons for any terms or term of years which were or was unexpired at the time of the death of the said James Armitage; All which matters &c.

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- \* IX. *Plea by several defendants that the plaintiffs are not next of kin, and averring that one of the defendants only sustains that character* (10).

The joint and several plea of the  
Right Honorable W. Lord B. and  
R. H. and F. his wife defendants  
to the bill of complaint of J. J.,  
D. J., and S. J. complainants.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do plead in bar to the said bill, and for plea say that the said complainants were not nor were any nor was either of them the next of kin of

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(9) See *Armitage v. Wadsworth*, 1 Madd. Rep. 189: the Vice-Chancellor held that the bill would have been demurrable but for the statement of outstanding leases, and that as the plea negated the existence of such leases it was good, and did not stand in need of any averment by answer. See also *Ld. Red. Tr. Pl. p. 222*, 4th edit.

(10) See *Ld. Red. Tr. Pl. p. 230*; *Beames on Pleas*, 121, 128.

the testator W. J. in the said complainant's bill named at the time of his death, nor are the said complainants nor is either of them now the next of kin of the said testator; For these defendants severally for plea say they have been informed and believe it to be true that H. J. of — was the grandfather of the said testator, and that he had nine children who all died before the said testator W. J. and only two of such children left issue living at the time of the death of the said testator, viz. Esther J. and Ann J.; And these defendants for plea further severally say they have been informed and believe that R. J. who was one of the nine children of the said H. J. of Erdington had only one child the said testator W. J. who survived his father; And that the said Esther J. died in the life-time of the said testator having intermarried with W. H. by whom she had issue one child only, namely, Susannah, who also died in the life-time of the said testator having married R. L. esq. by whom she had issue only two children, viz. this defendant W. Lord B., and E. L. who died in the life-time of the said testator; And that the said Ann J. died in the life-time of the said testator having intermarried with Sir C. F. by whom she had only one child, viz. Mary, who died in the life-time of the said testator having intermarried with the Right Honorable H. Earl of A. deceased, by whom she had six children, who all died in the life-time of the said testator except one, viz. Lady Mary who married W. H. commonly called Lord Viscount A. which said Lady Mary Viscountess A. was living at the time of the death of the said testator, and has since died; And these defendants do aver that this defendant W. Lord B. and the said Lady Mary H. commonly called Viscountess A. deceased were at the time of the death of the said testator his only next of kin, and that this defendant W. Lord B. is now his only next of kin; And these defendants severally say and aver that the said complainants were not nor are nor is any or either of them now the next of kin of the said testator, and do plead the same in bar to the said complainant's bill, and humbly pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto; And these defendants pray to be hence dismissed with their reasonable costs in this behalf sustained.

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\* X. *Plea of two outlawries, with the certificates thereof annexed* (11).

The plea of &c.

This defendant by protestation not confessing &c. [see form No. I. p. 94.] and for plea saith that the said complainant now is and standeth a person outlawed, and is thereby disabled by the laws of this realm to sue or commence any action or actions suit or suits in this honorable court or any other court until the said outlawry be reversed by due course of law; For this defendant saith that on Monday next after the Feast of St. John in the second year of the reign of his present Majesty King George the Fourth the said complainant by the name of Edmund Waters late of the Haymarket in the county of Middlesex esq. was outlawed in an action of trespass on the case for £300 at the suit of R. Hill (as by the said outlawry *sub pede sigilli* hereunto annexed appeareth); And further that on Monday next after the Feast of All Saints in the second year of the reign of his present Majesty King George the Fourth the said complainant by the name of Edmund Waters late of London esq. was outlawed in an action of trespass on the case for £200 at the suit of Joseph Cooper Joseph Watson Thomas Osborne Stock and Ford Wilson (as by the said last-mentioned outlawry *sub pede sigilli* hereunto also annexed appeareth), both of which said outlawries do yet stand and remain in full force and unreversed; And this defendant doth aver that the said Edmund Waters the complainant named in the said bill of complaint, and the said Edmund Waters named in the certificates of the said outlawries *sub pede sigilli* hereunto annexed, is one and the same person and not divers and several, and therefore this defendant doth humbly demand the judgment of this honorable court whether or no he shall be compelled to make any other or

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(11) This plea was considered to be a perfect plea of the outlawries, but was held to be defective for want of judicial evidence of the outlawries; the error having arisen by the mistake of the clerk of the outlawries, the Vice-Chancellor allowed the defendant to withdraw the plea, and to amend it by annexing an office copy of the *exigent* or record of the outlawry; *Waters v. Mayhew*, 1 Sim. & Stu. 220.

A plea of outlawry may be filed after an attachment has issued; *Waters v. Chambers*, 1 Sim. & Stu. 225. See further Ld. Red. Tr. Pl. p. 226; Beames on Pleas, p. 17, 100.

further answer to the said complainant's bill of complaint until the said complainant shall have reversed each and every of the said outlawries, and thereby become a person of ability and capable to exhibit a bill of complaint against this defendant, and in the mean time this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

The following certificates were annexed to the plea :

“ London, June 1821.

“ Edmund Waters late of the Haymarket in the county of Middlesex esquire outlawed in London on Monday next after the Feast of St. John before the Latin Gate in the 2d year of the reign of King George the 4th, at the suit of R<sup>d</sup> Hill.

“ R. Hill (L. S.)

Case £300.

“ Examined, John Young, deputy clerk of the outlawries.”

“ London, Nov. 1821.

“ Edmund Waters late of London esquire outlawed at the Hustings of Common Pleas held at Guildhall in and for the city of London on Monday next after the Feast of All Saints in the 2d year of his present Majesty King George the 4th.

“ At the suit of Joseph Cooper, Joseph Watson, Thomas Osborne Stock, and Ford Wilson.

“ Beavan (L. S.)

Case £200.

“ Examined, W. Haines, clerk of the outlawry.”

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XI. *Plea of the statute of frauds to a bill for specific performance of a parol agreement, accompanied by an answer to the matters stated in the bill tending to show a part performance;—with a note of the Lord Chancellor's decision on over-ruling the plea* (12).

This defendant by protestation &c. [*see form No. I. p. 94.*] to so much of the said bill as seeks to compel this defendant specifically to perform the agreement in the said bill mentioned to have been made

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(12) See Lord Red. Tr. Pl. p. 265, 7, and p. 299, 4th edit.; Beames on Pleas, 171, 6.

and entered into between the said complainant and this defendant for sale by this defendant unto the said complainant of a certain messuage or tenement in the said bill mentioned, or as seeks to compel this defendant to execute a conveyance of such messuage or tenement unto the complainant pursuant to any such agreement, or as seeks any other relief relating to such messuage or tenement, or as seeks any discovery from this defendant of or concerning any agreement made or entered into between the complainant and this defendant for sale by this defendant unto the said complainant of the said messuage or tenement and not reduced into writing and signed by this defendant or some person by him this defendant lawfully authorized, this defendant doth plead in bar, and for plea saith that by an act of parliament made in the twenty-ninth year of his Majesty King Charles the Second, intituled, "An act for prevention of frauds and perjuries," (13) it was amongst other things enacted, that from and after the 24th day of June 1677 no action should be brought whereby to charge any person upon any contract or sale of lands tenements or hereditaments, or any interests in or concerning them, unless the agreement upon which such action should be brought, or some memorandum or note thereof should be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized; As by the said act may appear; And this defendant further for plea saith that neither he this defendant nor any person by him lawfully authorized, did ever sign any contract or agreement in writing for making or executing any sale or conveyance to the complainant of the said messuage or tenement or any part thereof or any interest therein or to any such effect, or any memorandum or note in writing of any such agreement; All which matters and things this defendant doth aver to be true, and is ready to prove as this honorable court shall award; And therefore he doth plead the same in bar to so much and such parts of the said bill as aforesaid, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to so much and such parts of the said bill as is herein and hereby pleaded unto as aforesaid; And this defendant not waiving his said plea, but wholly relying and insisting thereon, and in aid and support thereof, for answer to the residue of the complainant's bill not hereinbefore pleaded unto or to so much thereof as he this defendant is advised is in anywise material or necessary for him to make answer unto, he answering saith that he this defendant was in

the month of — and now is seised in fee-simple of the messuage or tenement in the bill mentioned, together with the household goods and stock upon the premises, and that the same then were and now are in his possession or occupation in the manner therein set forth ; And this defendant also admits it to be true that this defendant was in the said month of — last desirous to sell the said messuage or tenement and the furniture and stock in and about the same, and that the complainant being by trade a brewer and maltster was then desirous of purchasing the same, and that a treaty was in the said month of — had between the said complainant and this defendant for the sale thereof by this defendant to the said complainant ; And this defendant further answering saith that while the said complainant and this defendant were treating or conversing together as to this defendant selling to the said complainant the said messuage or tenement, the said complainant asked this defendant's opinion whether S.W. who is named in the said bill was not a fit person to take or become tenant of the said premises, and this defendant having answered that he this defendant knew nothing to the contrary, the said complainant then desired that if this defendant should see the said S.W. this defendant would send him to the said complainant, and the said complainant at or about the same time asked this defendant at what yearly rent the said messuage or tenement was rated in the parish books ; and this defendant having answered that the said messuage or tenement was in such books rated at the yearly rent of £ —, the complainant further asked this defendant whether the same would bear rising for that the same was well worth £ — a year, or conversation to such or the like effect then passed between the said complainant and this defendant to the best of this defendant's remembrance and belief ; but this defendant also saith that this defendant's declaring that the said messuage or tenement was worth £ — a year proceeded from his speaking in a hurry or by surprise and without consideration, the said messuage or tenement being really worth to be let much more than £ — a year ; And this defendant further saith that this defendant having seen the said S.W. shortly after the aforesaid conversation with the said complainant, he this defendant informed the said S.W. that the said complainant wanted to see him the said S.W. for the purpose of treating with the said S.W. for letting unto the said S.W. the said messuage or tenement, or to such or the like effect ; And this defendant hath been since informed and believes that the said S.W. did very soon afterwards go to the said complainant, and that after some short treaty was had between them for the complainant's letting the said messuage or tenement to the said S.W. they the said S.W. and the

said complainant executed a writing bearing date the — day of — last and signed by them, whereby it was declared that in case he the said complainant should on or before — then next purchase the said message or tenement from B. for which he was then in treaty with him, that he would then give a lease thereof to the said S. W. at the rent of £— per annum, although this defendant for greater certainty as to the date and material contents of such writing craves leave to refer thereto, now in this defendant's custody or power, the same having been obtained from the said S. W. by a relation of this defendant's, and by him delivered to this defendant; but this defendant saith he doth not know or believe that the said complainant in writing or otherwise entered into any absolute agreement or any other agreement than as aforesaid for letting the said message or tenement unto the said S. W.; And this defendant also saith that to the best of his this defendant's remembrance and belief he this defendant did not at any time further or otherwise than as aforesaid communicate with the said S. W. for letting the said message or tenement unto him, or executing any lease thereof unto him, nor was further or otherwise than as aforesaid privy to the execution or signing of the same agreement dated the — day of — last by the said complainant or the said S. W. or either of them, or to the making of any agreement between them for the complainant's letting the said message or tenement unto the said S. W. before or at the time of the executing signing or making thereof or until some time afterwards; And this defendant is advised and humbly apprehends that according to the terms of the said writing dated the — day of — last the said complainant cannot be answerable to the said S. W. or liable to make any satisfaction to him for or on account of his not executing a lease of the said message or tenement to the said S. W. or not letting the same to him in case the said complainant should not be able to purchase the same from this defendant; And this defendant absolutely insists that the said written agreement dated the — day of — is now void and of no effect, as the said complainant was not become the purchaser of the said message or tenement by — now last past; And this defendant further saith he believes that the sum of £— in money and an annuity of £— for the life of this defendant were not in the said month of — last near a full and valuable consideration for the purchase of the freehold and inheritance of the said message or tenement. [*And denies combination.*]

W. A.



*Observation.*—The answer takes no notice of the charge that the defendant delivered the deeds to the attorney for the purpose of examining the title and preparing the conveyance; and that therefore in arguing the plea that charge must be admitted to be true; there was nothing in the instructions concerning that charge.

The bill and the facts stated in the answer were laid before A. and S. separately, they both advised the plaintiff to plead the statute of frauds.

The Lord Chancellor, Hilary Term, over-ruled the plea in this cause, but ordered it to stand for an answer, with liberty to except and saving to the defendants the benefit of the statute. At the hearing he considered the bill in the same light as if it had stated merely a parol agreement; for the matters contained in the bill tending to show a special performance of the agreement were so frivolous they might as well have been left out. Considering the bill in that point of view, he thought the plea a bad one; because it went to the discovery of that which if the court could be satisfied of the truth of by any other means but by evidence, they would decree performance of the agreement. He was therefore of opinion that the plea should be supported by an answer denying the fact of the agreement, and seemed to think that where the defendant pleads the statute of frauds and by his answer admits the agreement, the answer over-rules the plea, and the court would decree execution. He also observed that where a bill stated an agreement without mentioning it to be in writing a demurrer would be the proper mode of pleading according to the general rules of and principles of demurrers, because it appears on the face of the bill that the plaintiff has not made out such a case as entitles him to relief; but he added that the usual course was to plead the statute to such a bill, and that the practice had obtained by analogy to the courts of law, where if the declaration stated an agreement without mentioning it to be in writing, it was always usual to plead the statute in bar to it.

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XII. *Plea of the statute of frauds in bar to so much of a bill as sought to compel the specific performance of a parol agreement for a lease.*

The plea of &c.

This defendant by protestation &c. [*see form No. I. p. 94.*] as to so much of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease in writing of the several lands and tenements in the said bill mentioned or of any of them or of any part thereof pursuant to the pretended agreement in the bill mentioned, and as to any relief thereby prayed touching such lease and agreement, this defendant doth plead in bar, and for plea saith that by an act of parliament made in the twenty-ninth year of the reign of his late Majesty King Charles the Second, intituled "An act for the prevention of frauds and perjuries;" it is amongst other things enacted, that from and after the 24th day of June 1677, no action shall be brought whereby to charge any person upon any contract of lands tenements or hereditaments or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto lawfully authorized; As by the said act may appear; And this defendant avers that neither he this defendant nor any person by him lawfully authorized, did ever make or sign any contract or agreement in writing for making or executing any lease to the said complainant of the same premises or any of them or of any part or parcel thereof or to any such effect as by the said bill is suggested, or any memorandum or note in writing of any agreement whatsoever for or concerning the demising or leasing or making or executing any lease of the said premises or any of them or any part or parcel thereof to the complainant; And therefore this defendant doth plead the said act of parliament and the matters aforesaid in bar to so much and such part of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease to the complainant of the several lands and tenements in the bill mentioned or any of them or of any part or parcel thereof pursuant to the said pretended agreement and as to any the relief thereby prayed touching such lease and agreement, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer &c.

XIII. *Plea of the statute of limitations to a bill by an administratrix for account.*

The plea of &c.

This defendant by protestation &c. [*see form No. I. p. 94.*] to all the discovery and relief in and by the said bill sought from or prayed against this defendant, other than and except such parts of the said bill as seek a discovery of or concerning the age of T. N. P. in the said bill named, or a discovery whether the said T. N. P. out of respect or affection for the said T. P. his father did not forbear or was not unwilling to take or use any compulsory measures for obtaining a settlement of the accounts of the matters in the said bill mentioned, this defendant doth plead in bar, and for plea saith that by an act of parliament made and passed in the 21st year of King James the First, intituled, "An act for limitation of actions and for avoiding suits at law," it was enacted &c. [*stating the act*] (14); And this defendant for further plea saith that if the said complainant either in her own right or as administratrix of the said S. N. deceased, or as administratrix of the said personal estate of R. N. deceased in the said bill named or otherwise ever had any cause of action or suit against this defendant or against the said T. P. this defendant's testator for or concerning any of the matters in the aforesaid bill of complaint mentioned which this defendant doth in no sort admit, such cause of action or suit did accrue or arise above six years before the filing of the complainant's bill of complaint, and above six years before serving or suing out process against this defendant to appear to and answer the same bill; and the said T. N. P. was not at any time within upwards of six years before the filing of the complainant's bill, or within upwards of six years before the serving or suing out process against this defendant to appear to and answer the said bill, nor hath the complainant at any time since the death of the said T. N. P. been under any of the disabilities mentioned and described in the said act of parliament; And this defendant for further plea saith that neither he this defendant nor to his knowledge or belief the said T. P. deceased this defendant's testator did at any time within six years before exhibiting the said bill or serving or suing out process against this defendant to appear

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(14) C. 16. s. 3; and see *Ld. Red. Tr. Pl.* p. 269; *Beames on Pleas*, p. 161, and note (4), *ib.*; 15 *Ves.* 198; 18 *Ves.* 286; 19 *Ves.* 185.

to and answer the same, promise or agree to come to any account for or to pay or any ways satisfy the said complainant any sum or sums of money for or by reason of any matters transactions or things in the complainant's said bill of complaint charged or alleged; All which matters and things this defendant doth aver to be true, and is ready and willing to maintain and prove as this honorable court shall award; and he doth plead the same in bar to the whole of the said bill except such parts as aforesaid, and doth humbly demand the judgment of this honorable court whether he this defendant ought to be compelled to make any further or other answer to such parts of the said bill as he hath pleaded unto; and this defendant not waiving or relinquishing their said plea &c. [*as in p. 99*], he this defendant answereth and saith he believes that the said T. N. P. attained his age of twenty-one years in or about —; and this defendant doth not know or believe that the said T. N. P. for any time whatsoever, forbore or was unwilling out of respect or affection for the said T. P. his father to take or use any compulsory measures for obtaining any settlement of the accounts in the bill mentioned: Without that &c.

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\*XIV. *Plea of the statute of limitations to so much of a bill as sought a discovery of title-deeds, and of the defendant's title to the estates in question, supported by averments shewing an uninterrupted possession for sixty years and upwards in the defendant and the party through whom he claimed, accompanied by an answer to so much of the bill as required a discovery of the time when the party through whom the plaintiff claimed was seised of the estate (15).*

The plea of T. L. defendant, to part,  
and his answer to the residue of  
the bill of M. B. complainant.

This defendant by protestation &c. [*see form No. 1. p. 94.*] as to so much of the said bill as seeks to have any discovery from this defendant of all or any or either of the deeds writings evidences

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(15) See *Ld. Red. Tr. Pl.* p. 258, 271; *Beames on Pleas*, 161, and p. 331, where a form of plea of forty years possession without account is to be found.

conveyances and assurances in this defendant's custody knowledge or power, touching or concerning the manor rectory lands tenements grounds and hereditaments in the said bill mentioned or the right or title thereof, or as seeks a discovery of what estate right title or interest this defendant hath in or to the said premises in the said bill mentioned, this defendant doth plead thereto, and for plea saith that by an act of parliament made in the 21st year of the reign of King James the First, intituled, "An act for limitation of actions and for avoiding suits at law," it was enacted that no person or persons should at any time thereafter make any entry into any lands tenements or hereditaments, but within twenty years next after their right or title should first descend or accrue to the same; And in default thereof such persons so not entering and their heirs should be utterly excluded and disabled from such entry after to be made (16); And this defendant doth aver that J. J. in the said bill named, and under whom the said complainant claims title to the said premises or any other person for his use or in trust for him, was not at any time within the space of twenty years next before his the said J. J.'s death in the possession or in the receipt of the rents or other profits of the manor rectory lands tenements grounds and hereditaments and other the premises mentioned in the said complainant's bill or any part thereof; And this defendant doth likewise aver that the said J. J. at his death left E. J. his brother and heir at law; And that the said E. J. or any person for his use or in trust for him was not in his life-time and after the death of the said J. J. in the possession or in the receipt of the rents or other profits of the same premises or any part thereof; And this defendant doth likewise aver that the said complainant or any person under whom he claims or any other persons or person for his or their or any of their use or in trust for him or them or any of them, were not nor was after the death of the said E. J. to the time of filing the said complainant's bill in the possession or in the receipt of the rents and other profits of the same premises or any part thereof; And this defendant doth also aver that the said complainant or any person under whom he claims or any other person or persons for his or their or any of their use or in trust for him or them or any of them was not nor were within twenty years next before the filing of the said complainant's bill in the possession or in the receipt of the rents or other profits of the same premises or any part thereof; And this defendant doth aver that E. B. the grandfather of this defendant's wife was in the

year 1762 for the space of fifty years and upwards then last past in the continual peaceable and uninterrupted possession and enjoyment by himself and his tenants of the said manor rectory lands tenements grounds and hereditaments and every part thereof, and continued so to be until this defendant entered thereupon in the said year 1762, in which year this defendant entered upon the said premises; And he this defendant from that time to the time of filing the said complainant's bill [ 1770 ] was in the continual peaceable and uninterrupted possession and enjoyment thereof by himself and his tenants, and is now in the actual possession and receipt of the rents and profits thereof; And this defendant doth plead the said act of parliament and such possession and enjoyment as aforesaid to so much of the said bill as is hereinbefore pleaded to; And this defendant humbly prays the judgment of this honorable court whether he ought to make any further answer to so much of the said bill as is hereinbefore pleaded to; And this defendant not waiving his said plea but wholly relying and insisting thereon, for answer to the residue of the said bill or so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith he believes it to be true that J. J. in the said bill named was in or before the year 1670 and not since that year seised or well entitled to him and his heirs in fee-simple in possession of in and to the manor and rectory of B., and divers lands tenements grounds and hereditaments thereunto belonging and therewith held and enjoyed by the said J. J. and his ancestors as their family estate situate and being at B. in the county of — : Without that &c.

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\* XV. *Plea of a former suit depending for the same matters in bar to a bill for account* (17).

The joint and several plea of R. H. and G. H. defendants to the bill of complaint of R. S. and P. D. executors of the last will and testament of J. P. deceased, on behalf of themselves and all other the creditors of G. S. deceased, complainants.

These defendants by protestation &c. [*see form No. I. p. 94.*] do plead in bar to the said bill, and for cause of plea severally say that the said complainants together with R. C. since deceased did in or as of Michaelmas Term 1802 exhibit in this honorable court their bill of complaint which was afterwards amended against J. S. and these defendants and G. S. now deceased, J. C. now deceased, and N. N. now deceased, thereby praying amongst other things that &c. [*stating the prayer*]; And these defendants for plea severally further say that they put in their joint and separate answer to the said amended bill, and which suit is now depending in this honorable court; And these defendants do aver that the said bill now exhibited against these defendants by the said complainants is for the same matters as the amended bill before exhibited by the said complainants and the said R. C. deceased against these defendants and the said J. S. and the said G. S., J. C. and N. N. now respectively deceased, to which these defendants have appeared and answered, and which suit is still depending and undetermined; and therefore these defendants do plead the said former bill and answer in bar to the said complainant's now bill, and humbly pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto; And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

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(17) See *Ld. Red. Tr. Pl. 246, 7*, 4th edit.; *Beames on Pleas*, p. 134, 6, and p. 330, where a form of a similar plea is to be found; *Crofts v. Wortley*, 1 Ch. Ca. 241; *Foster v. Vassall*, 3 Atk. 587; *Urtin v. Hudson*, 1 Vern. 331; *Devic v. Lord Brownlow*, 2 Dick. 611.

\* XVI. *Plea of another will in bar to a bill by a devisee for redemption* (18).

The plea of &c.

This defendant by protestation &c. [ *see form No. I. p. 94.*] and for plea saith that the will and testament in writing of R. M. in the said bill named bearing date on or about the 27th day of October 1807, and by which it is in the said bill stated that the said R. M. did thereby give and devise all the estate in the said bill mentioned called M. together with the slaves and all the chattels implements and other property thereupon unto the said complainant and this defendant, to hold the same unto the said complainant and this defendant their heirs and assigns as tenants in common and not as joint-tenants, and by which it is also stated in the said bill that the said testator did give devise and bequeath all the rest and residue of his real and personal estate of what nature or kind soever and wheresoever situate unto the said complainant and this defendant as tenants in common absolutely and for ever, and under which will the said complainant claims, was not the last will and testament of the said R. M., for this defendant saith that the said R. M. duly made and published another will, which was his last will and testament in writing, bearing date 15th April 1808, and that such will was executed by him and attested as by law is required for passing real estates, and is in the words and figures following (that is to say) " This is the last will and testament of me R. M. late of &c. but now of &c. gent. I direct &c. [*stating the will verbatim, and also the attestation clause*]. And this defendant doth aver that the estate devised by the said last-mentioned will to this defendant and her heirs is the same estate of which the said complainant seeks an account of the rents and profits, and which he seeks to redeem by his said bill; And this defendant therefore avers that the said complainant hath not any title to or interest in the rents and profits of the said estate in his said bill mentioned, nor in the equity of redemption thereof, or the title-deeds papers or writings relating thereto; All which matters this defendant doth plead in bar to the said bill, and to the discovery and relief sought thereby, and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and she prays to be hence dismissed with her reasonable costs in this behalf most wrongfully sustained.

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(18) See *Ld. Red. Tr. Pl.* p. 263; *Bea. on Pleas*, 248; 2 *Ves. & B.* 261.



## CHAPTER XII.

## REPLICATIONS.

\* I. *A general replication to a defendant's answer* (1).

The replication of A. B. complainant to the answer of C. D. defendant.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this repliant; Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto confessed and avoided traversed or denied is true; All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

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(1) A replication is the plaintiff's answer or reply to the defendant's plea or answer. Formerly if the defendant by his plea or answer offered new matter, the plaintiff replied specially, the consequence of which was a rejoinder by the defendant, but special replications are now out of use; if however a plaintiff is disposed to controvert a part of the case made by the defendant's answer, and to admit the rest, he may still put in a replication so far special that it is confined to the particular matter controverted, instead of being a general denial of the truth of the whole answer, and then the defendant is put only to proof of the matter replied to. *Ld. Red. Tr. Pl.* p. 321, 2, 4th ed.

\* II. *A special replication to the answers of several defendants (2).*

The replication of John Marshall complainant to the several answers of Holdsworth Newman, John Baring, William Newman, and Richard Newman, defendants to the said complainant's original and amended bill.

This repliant saving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for and by way of replication saith that his said original and amended bill of complaint exhibited into this court against the said defendants and all and every the matters &c. therein contained are true certain and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are untrue uncertain and insufficient in the law to be replied unto by this repliant, save and except that this repliant doth admit to be true as in the said answers some or one of them is by the said defendants some or one of them alleged, that the mortgage in the said original and amended bill mentioned to be made by Philip Marshall deceased to Richard Newman and Robert Newman deceased and therein respectively named, and bearing date the 2d day of June 1754, was made and entered into between them of and concerning and comprehended all the said Philip Marshall's then plantations and meadows in Newfoundland and in the said original and amended bill and the said defendants' said answers respectively mentioned, and that the same plantations and meadows were or are all situate and being in St. John's Newfoundland aforesaid in the said bill also mentioned; and this repliant doth moreover admit it to be true as in the said answers of the said defendants some or one of them is alleged, that on or about the 2d day of October 1775 the said Philip Marshall did settle an account with an agent of or for the said Richard Newman then deceased and in the said bill named, or of or for his executors, of and concerning all and every sum and sums of money therefore due and owing from the said Philip Marshall to the said Richard Newman and Robert Newman or either of them their or either of their

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(2) This and the preceding form are taken from Hinde's Chancery Pr. 285, 6.

A special replication is always signed by counsel.

executors or administrators, and did by an agreement of that date in writing under his hand and seal admit, and this repliant doth now hereby admit and acknowledge, that on the said 2d day of October 1755 there was due and owing from the said Philip Marshall on the said security of all the said plantations and premises, and on the balance of such accounts the full sum of £577. 3s. in the said answers or some or one of them mentioned and claimed as the then balance of such accounts and payable with interest; Without that, that there is any other matter or thing in the said defendants' said answers contained material or effectual for this repliant to reply unto, and not herein and hereby well and sufficiently replied unto confessed and avoided traversed or denied is true; All which matters and things (save and except as aforesaid) this repliant is ready to aver and prove as this court shall award, and prays as in and by his said original and amended bill he hath prayed.

John Heath.

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CHAPTER XIII.

EXAMINATIONS.

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\* I. *Form of examination of a defendant in the Master's office upon interrogatories settled by a Master pursuant to a decree.*

In Chancery.

Between A. B. - - - - - Complainant,  
and  
C. D. - - - - - Defendant.

The answer and examination of the said defendant C. D. to interrogatories exhibited on behalf of the said complainant A. B. for the examination of the said defendant before Sir J. S. bart. one of the Masters of this court to whom this cause stands referred, pursuant to the decree made on the hearing of this cause dated —.

To the first interrogatory this examinant saith that &c.

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\* II. *Examination of executors in the Master's office, referring to schedules annexed* (1).

In Chancery.

Between &c. [*naming all the parties, plaintiffs and defendants.*]

The examination of the said complainants J. W. and A. G. the executors of S. P. deceased in the pleadings in this cause named, upon interrogatories exhibited by the said defendants before J. W. esq. one of the Masters of this honorable court pursuant to the decree made on the hearing of this cause bearing date the — day of —.

Ist.—To the first interrogatory these examinants say that shortly after the decease of S. P. the testator in the pleadings in this cause named which happened on or about the 3d day of December which was in the year of our Lord —, these examinants employed T. N. then a licensed appraiser and auctioneer in the city of Bristol but now deceased, to take an inventory and make an appraisement, and the said T. N. did as these defendants believe take an inventory and make an appraisement, of all the household goods

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(1) In stating accounts, if a defendant has set forth in the schedules all the receipts and payments down to the time of filing his answer, he must in his examination state only the subsequent receipts and payments, and carry on the account from the foot of his answer to the time of putting in his examination; for although the interrogatories extend to a wide sweeping inquiry into all receipts and payments, a repetition of those comprised in the schedule to the answer might subject the examination to a reference for impertinence; so on the other hand a defective account, to a reference for insufficiency; and if for the purposes of spleen it runs into scandal, it might be referred and expunged.

An examination is subject to all the infirmities of an answer; the admissions should be so framed that the receipt and application *should be in the same sentence forming one transaction*, and not distinct matters, and should be *uno flatu*, otherwise the admission would be evidence of the receipt, and the application must be proved by evidence; 1 Turn. Ch. Pr. p. 584, 6th ed.; *Blount v. Burrow*, 1 Ves. jun. 546; *Ridgeway v. Darwin*, 7 Ves. 404; *Thompson v. Lumbe*, *ibid.* 587; *Robinson v. Scotney*, 19 Ves. 582.

Examinations do not require to be signed by counsel; *Bonus v. Flack*, 18 Ves. 287, 2d ed.; *Jac. Rep.* 224; and see *Keene v. Price*, 1 Sim. & Stu. 99.

and furniture linen and other personal estate and effects of the said testator then being in and about his dwelling-house, situate in &c. (other than and except such parts thereof as consisted of chattel interests in houses or lands, and money due on mortgages bonds and promissory notes, and also other than and except such parts of his said personal estate as were and are by the said testator in and by his said will and codicil specifically given bequeathed and disposed of,) and such household goods household furniture and linen so inventoried and appraised were afterwards sold and disposed of by public auction by the said T. N., and such inventory and appraisal so made and taken by the said T. N. is now in the custody or power of this examinant A. G., and these examiners crave leave to refer thereto; And these examiners say that they did not make any inventory or particular of the real estates or of the chattels real or securities of their said testator, but the same are nevertheless hereinafter in this their examination fully and particularly mentioned described and set forth according to the best of their knowledge and belief.

2d.—To the second interrogatory these examiners say that the said S. P. the testator in the pleadings in this cause named was at the time of his death in manner hereinafter mentioned possessed of interested in or entitled unto a considerable personal estate consisting of leases for terms of years absolute and determinable with lives, and also of monies due and owing to him upon mortgages bonds and promissory notes, rents and arrears of rent, and the several household goods and furniture contained and set forth in the said inventory and appraisal, but no cash to the knowledge or belief of these examiners; And these examiners say that in a schedule hereunto annexed entitled “The first schedule,” and which they pray may be taken as part of this their examination and to which they crave leave to refer, they have according to the best of their knowledge remembrance information and belief, each speaking for himself, set forth a full true and particular account of all the goods chattels rights credits debts personal estate and effects whatsoever of or belonging to their said testator the said S. P. at the time of his death, with the several and respective natures species kinds sorts quantities qualities and true and utmost values thereof respectively, distinguishing what part thereof consisted of chattels real from the said testator’s other personal estate; And these examiners also say that their said testator was at the time of his death seised of a freehold estate consisting of two messuages or dwelling-houses coach-houses stables and other buildings situate in — aforesaid, but no other freehold estate to the knowledge or belief of these

Reference to the  
1st Schedule :

examinants; And these examinants in another schedule hereunto annexed entitled, "The second schedule," which they pray may be taken as part of this their examination and to which they also crave leave to refer, have according to the best of their knowledge information and belief set forth a true and particular account of the said freehold estates of the said testator and of the yearly value thereof, and of all rents due and in arrear for such freehold estates at the time of their said testator's death; And in another schedule hereunto annexed entitled "The third schedule," which they pray may be taken as part of this their examination and to which they also crave leave to refer, these examinants have set forth a true account of how much and what particular parts or part of the said testator's personal estate or of such rents and profits have or hath at any time or times and when been received got in or possessed by these examinants respectively, or by any person or persons and whom by their or either of their order direction privity or consent, or for their or either of their use respectively, with the several and respective particulars and the value thereof, and how and when and by whom and for what use or purpose the same have been sold paid applied administered or disposed of, and how much and what part thereof doth now remain in the hands of these examinants and of each of them and what is become thereof; And these examinants also say that in the same schedule they have to the best of their knowledge information and belief set forth a true and particular account of what debts due and owing to their said testator's estate are now standing out and unreceived either wholly or in part and from whom the same are so respectively due and owing, and why the same have not been got in and received by them; And they have also in the same schedule set forth an abstract or list and short account of all securities now in their hands custody or power and of all debts due and owing to their said testator's estate.

Reference to the  
2d Schedule :

Reference to the  
3d Schedule :

3d.—To the third interrogatory these examinants say that the said S. P. was at the time of his death indebted unto several persons in divers sums of money to a considerable amount; And these examinants have in another schedule hereunto annexed entitled "The fourth schedule," which they also pray may be taken as part of this their examination and to which they crave leave to refer, set forth according to the best of their respective knowledge and belief and so far as they are able, a full true and particular account of all sums of money paid by these examinants in discharge of debts due and owing from their said testator at the time of his death, and to whom such debts were due, and for what and when and by whom such debts were paid or satisfied respec-

Reference to the  
4th Schedule :

tively; And these examinants believe that all such sums of money so paid as aforesaid were really due and owing from their said testator at the time of his death, and that nothing now remains due for or on account of any debts or debt of their said testator, so far as such debts have come to their knowledge respectively; And these examinants say that they have also paid or expended divers large and considerable sums of money for or on account of the said testator's funeral expenses and for the probate of his will, and other expenses relating to his affairs; And these examinants have in the last-mentioned schedule set forth an account of such sum or sums of money as they have so respectively paid on the accounts aforesaid, and also the times when and the persons to whom the same have been so paid, or how the same have been expended; And these examinants verily believe that no further sum or sums of money now remain due or owing to any person or persons in respect of the debts or funeral expenses of the said testator or otherwise on account of his estate, except the costs and charges of these examinants as executors as aforesaid, and particularly the costs of this suit:

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\* III. *Examination of femes covert entitled to shares of money in a cause; with the certificate of the commissioners and affidavit of the attesting witness.*

Between &c. [*naming all the parties, plaintiffs and defendants.*]

The examination of the plaintiffs Hannah D. and Mary G., in pursuance of an order made in this cause bearing date the — day of — 1786.

Whereas it is ordered by the said order of the — day of — last that the plaintiff Hannah the wife of the plaintiff R. D. who resides at —, and the plaintiff Mary the wife of the plaintiff I. G., who resides at —, should respectively attend E. B. of &c. esq. the Rev. W. L. of &c. the Rev. J. Q. of &c. and H. D. of &c. or any two of them, and the said plaintiff Hannah D. was to be solely and secretly examined by them separate and apart from her said hus-



band, how and in what manner and to what uses she was willing and desirous the third part of the sum of £575. 10s. 5d. cash in the bank in the said order mentioned should be paid and applied, and the said plaintiff Mary G. was also to be solely and secretly examined by them separate and apart from her said husband, how and in what manner and to what uses she was willing and desirous her third part of the said cash in the bank should be paid and applied, and the said E. B., W. L., J. Q. and H. D. or any two of them who should examine the said Hannah D. and Mary G. were to take their examinations respectively in writing, and the same were to be signed by them respectively, and the said E. B., W. L., J. Q., and H. D. or any two of them who should take such examinations were to certify the same in writing, and the signing of the said Hannah D. and Mary G. and such certificates were to be verified by affidavit, and upon the return of such certificates such further order should be made as should be just: Now I the said plaintiff Hannah D. being solely and secretly examined by the said E. B. and H. D. separate and apart from the said plaintiff R. D. my husband, how and in what manner and to what uses I the said plaintiff Hannah D. am willing and desirous my third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned should be paid and applied, I the said plaintiff Hannah D. do say and declare that I am willing and desirous that the sum of £191. 16s. 10d. being my third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned may and shall be paid to the said plaintiff R. D. my husband to and for his own use and benefit, and I the said plaintiff Hannah D. do hereby freely and voluntarily consent that the same may be paid to him accordingly; And I the said Mary G. being solely and secretly-examined by the said E. B. and H. D. separate and apart from the said plaintiff J. G. my husband how and in what manner and to what uses I the said plaintiff Mary G. am willing and desirous my third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned shall be paid and applied, I the said plaintiff Mary G. do say and declare that I am willing and desirous that the said sum of £192. 16s. 10d. being my third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned may and shall be paid to the said plaintiff J. G. my husband to and for his own use and benefit, and I the said Mary G. do hereby freely and voluntarily consent that the same may be paid to him accordingly; In witness whereof we the said plaintiff Hannah D. the wife of the plaintiff R. D. and the said plaintiff Mary G. the wife of the said plaintiff J. G. have

hereunto signed our names respectively the — day of —  
1786.

Witness Wade Smith.

Hannah D.  
Mary G.

[*Endorsed*]

(A)

This is the paper referred to by the affidavit of Wade Smith, sworn to by him this — day of — 1786, when the same paper-writing was produced and shown to the said deponent.

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COMMISSIONERS' CERTIFICATE.

Between &c. [*naming all the parties.*]

To the Right Honorable &c.

We E. B. of — esq. and H. D. of — gent. do hereby certify unto your lordship that pursuant to an order made by your lordship in this cause bearing date the — day of — 1786, we have been attended by the plaintiff Hannah the wife of the plaintiff R. D. who resides at — and by the plaintiff Mary the wife of the said plaintiff J. G. who resides at — respectively, and we have in pursuance of the said order examined the said plaintiff Hannah D. solely and secretly separately and apart from the said plaintiff R. D. her husband, how and in what manner and to what uses she the said plaintiff Hannah D. was willing and desirous the third part of the sum of £575. 10s. 5d. cash in the bank in the said order mentioned should be paid and applied, and we did at the same time read the said order to her and explain to her the purport and effect thereof, and we do certify unto your lordship that the said plaintiff Hannah D. did on such her examination say and declare she was willing and desirous that the sum of £191. 16s. 10d. being her third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned might and should be paid to the said plaintiff R. D. to and for his own use and benefit, and she did thereby freely and voluntarily consent that the same be paid to him accordingly; And we do further certify unto your lordship that we have in pursuance of the said order also examined the said plaintiff Mary G. solely and secretly separately and apart from the said plaintiff J. G. her husband, how and in

what manner and to what uses she the said plaintiff Mary G. was willing and desirous her third part of the sum of £575. 10s. 5d. cash in the bank in the said order mentioned should be paid and applied, and we did at the same time read the said order to her and explain to her the purport and effect thereof, and we do certify unto your lordship that the said plaintiff Mary G. did on such her examination say and declare she was willing and desirous that the sum of £191. 16s. 10d. being her third part of the said sum of £575. 10s. 5d. cash in the bank in the said order mentioned might and should be paid to the said plaintiff J. G. her husband to and for his own use and benefit, and she did thereby freely and voluntarily consent that the same be paid to him accordingly, and we took down such the examinations declarations and consents of the said Hannah D. and Mary G. in writing, and they thereupon signed the same respectively as thereby now appears. Witness our hands the — day of — 1786.

E. B.

H. D.

Witness Wade Smith.

[ *Endorsed* ]

(B)

This is the paper-writing referred to by the affidavit of Wade Smith, sworn to by him this — day of — 1786, when the same paper-writing was produced and shown to the said deponent.

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 AFFIDAVIT.

' Between &c. [ *naming all the parties.* ]

Wade Smith of —, gent. maketh oath and saith that he was present and did see Hannah D. wife of the plaintiff R. D. and Mary G. wife of the plaintiff J. G. respectively sign the examination declaration and consent being the paper-writing marked with the letter (A), and saith that he was also present and did see E. B. of —, esq. and H. D. of —, gent. sign the certificate marked with the letter (B), and that the names Hannah D. and Mary G. now appearing set to the said examination declaration and consent as the names of the said Hannah D. and Mary G. and the names E. B. and H. D. now appearing set to the said certificate as the parties signing the same are of the respective proper hand-writing

## EXAMINATIONS.

of the said Hannah D. and Mary G. and E. B. and H. D., and that the name "Wade Smith" now appearing set or subscribed to the said examination declaration and consent and also to the said certificate as a witness to the signing the same respectively, is and are respectively of the proper hand-writing of this deponent.

Wade Smith.

Sworn &c.

\*IV. *Examination of a feme covert upon a commission, as to her execution of a deed of settlement (under the 39th and 40th Geo. 3. c. 56.) of monies to which she was entitled, subject to be laid out in lands in tail; with the certificate of the commissioners and affidavit of the attesting witness.*

In Chancery.

Between &c. [*naming all the parties, plaintiffs and defendants.*]

I, D.W. the wife of the said J.G.W. do hereby declare that I freely and voluntarily executed the deed mentioned in the pleadings in this cause bearing date the 12th day of April 1783, and that I am well acquainted with the purport and effect thereof, and desire that the same may be carried into execution. Witness my hand this — day of — 1783.

Witness John Gibbs.

D.W.

## COMMISSIONERS' CERTIFICATE.

Between &c. [*naming all the parties.*]

To the Right Honorable &c.

We whose names are hereunto subscribed do hereby certify to your lordship that pursuant to an order made in this cause bearing date the — day of — 1783, we attended the said D. W. the wife of the said J.G.W., and after having separately and apart from her said husband read to her the deed bearing date the 12th day of April 1783 in the said decree mentioned and explained to her the purport and effect thereof, we did examine her separately and apart from her said husband whether she had freely and voluntarily executed the said deed, and whether she was consenting that the

same should be carried into execution, and on such examination the said D.W. did declare that she had executed the said deed freely and voluntarily, and was consenting and desirous that the same should be carried into execution, and that we took down such her examination or declaration in writing, and that she thereupon signed the same as the same now appears above written. Witness our hands this — day of — 1783.

Witness John Gibbs.

A. B.

C. D.

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AFFIDAVIT.

Between &c. [*naming all the parties.*]

John Gibbs of —, gent. maketh oath and saith that he was present and did see the said defendant D.W. the wife of the said defendant J.G.W. sign the examination or declaration above written, and that he was also present and did see the said A. B. and C. D. sign the certificate above written, and that the name D— W— now appearing set to the said examination or declaration, and the names A— B— and C— D— now appearing set to the said certificate as the parties signing the same respectively, are of the respective proper hands-writing of the said D.W. A.B. and C.D., and that the name John Gibbs now appearing set or subscribed to the said examination or declaration, and also to the said certificate, as a witness to the signing the same respectively, is and are of the proper hand-writing of him this deponent.

John Gibbs.

Sworn &c.

\* V. *Examination of a person claiming an interest in the premises in the pleadings mentioned, who had petitioned to be examined upon an interrogatory pro interesse suô.*

In Chancery.

Between H. R. an infant, by John Miller his  
next friend - - - - - Plaintiff,  
and  
T. J. W., M. A. T. &c. &c. - Defendants.

The answer and examination of G. R. of —, to a certain interrogatory exhibited before F. C. esq. one of the Masters of this honorable court for the examination of the said G. R. *pro interesse suô* in certain premises in the pleadings in this cause mentioned, pursuant to an order of this honorable court bearing date the — day of — made on the petition of the said G. R.

To the said interrogatory this examinant saith that by a certain indenture of lease bearing date &c.; And this examinant further saith that by a certain indenture of assignment bearing date &c.; And this examinant further saith that the said T. J. W. being entitled to the said two-tenth parts or shares of and in the said last-mentioned leasehold messuages or tenements and premises under and by virtue of the last two mentioned assignments did in and by a certain indenture of assignment bearing date on or about the — day of —, for the considerations therein mentioned, grant bargain sell assign transfer and set over unto him this examinant all those two full and equal undivided tenth parts or shares (the whole into ten equal parts or shares to be divided) of and in all the said last-mentioned leasehold messuages or tenements and premises hereinbefore described, To hold the same unto this examinant his executors administrators and assigns for all the rest residue and remainder then to come and unexpired of the said term of — years; And this examinant further saith that under and by virtue of the last will and testament of the said W. H. and the several assignments hereinbefore mentioned, he is entitled to eight-tenths of the said leasehold messuages or tenements and premises comprised in and demised by the said indenture of lease of the — day of —, for all the residue of the said term of — years thereby granted.

CHAPTER XIV.

EXCEPTIONS.

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SECT. I.

EXCEPTIONS TO ANSWERS.

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\* I. *An exception to the answer of several defendants* (1).

In Chancery.

Between W. W., J. W., and C. L. on behalf  
of themselves and all other the  
creditors of J. B. who shall come  
in and contribute to the expense  
of this suit, - - Complainants,  
and  
J. G. and T. B., - - Defendants.

An exception taken by the said complainants to  
the insufficient answer of the said defendants.

For that the said defendants have not to the best of their know-  
ledge remembrance information and belief, answered and set forth a

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(1) Exceptions to an answer must state *verbatim* the interrogatories not answered; but if the defendant submits to answer the exceptions, it is too late to object to the form of them; *Hodgson v. Butterfield*, 2 Sim. & Stu. 236.

In preparing exceptions care should be taken that all the points of insufficiency are embodied in the exceptions; for by the general rule of practice, a plaintiff is not allowed to add to or alter exceptions after they are filed; but this rule bends to circumstances; upon a clear mistake accounted for, and on special application leave has been given to amend exceptions, *Dolder v. The Bank of England*, 10 Ves. 283; and see *Partridge v. Haycraft*, 11 Ves. 570; 1 Turn. Ch. Pr. 784. If the defendant puts in an insufficient answer to the exceptions, the answer must be referred back upon the old exceptions.

Where there are two or more defendants who put in separate and distinct answers, separate exceptions must be filed to each answer,

full just and true inventory and account of all and singular the goods and chattels personal estate and effects whatsoever which J. B. the younger in the said bill named was possessed of entitled to or interested in at the time of the date of the indenture in the said bill mentioned, and all the particulars whereof the same consisted, and the quantities qualities full real and true values thereof and of every such particulars; And whether all or some and which of such particulars have not and when been possessed or received by or come to the hands of them the said defendants or the one and which of them, or some and what person or persons by their or either of their order or for their or either of their use, and how and in what manner and when and where and by and to whom and for how much the same and every or any and what part thereof hath been sold and disposed of; And whether any and what parts thereof and to what value or amount now remain undisposed of and what is become thereof.

In all which particulars the said complainants except to the answer of the said defendants as evasive imperfect and insufficient, and humbly pray that the said defendants may be compelled to put in full and sufficient answer thereto.

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*Sydolph v. Monkston*, 2 Dick. 609; and where exceptions were taken to the joint answer of two defendants and one of them died, the exceptions were referred as to the answer of the surviving defendant only, *Lord Herbert v. Pusey*, 1 Dick. 255.

Upon exceptions taken to an answer for insufficiency, the Master may look to the materiality of them, and may over-rule immaterial exceptions, *Agar v. Regent's Canal Company*, Coop. R. 213, 4.

Exceptions to an answer must be signed by counsel, *Candler v. Partridge*, 6 Madd. 102; *Yates v. Hardy*, Jac. Rep. 224.

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\* II. *An exception taken to the answer of a defendant to an amended bill (2).*

In the Exchequer.

Between A. B. - - - Complainant,  
and  
C. D. - - - Defendant.

An exception taken by the said complainant to the insufficient answer of the said defendant to the said complainant's amended bill of complaint.

For that the said defendant hath not to the best and utmost of his knowledge remembrance information and belief, set forth the documents by which the modus or composition in the said defendant's former answer alleged and insisted upon is made out.

In which particular the said complainant excepts to the answer of the said defendant as evasive imperfect and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

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(2) In *Williams v. Davies*, 1 Sim. & Stu. 426, where exceptions had been allowed to an answer, and the bill having been amended the defendant put in a second answer, upon exceptions taken to the second answer, entitled, 'Exceptions taken by the said complainant to the further answer put in by the said defendant Lewis Davies to the original bill of complaint, and his answer to the amended bill of complaint filed by the said complainant in this cause,' they were held to be irregularly intitled, and were ordered to be taken off the file, because no new exceptions could be taken to the further answer, but if considered insufficient, it should have been referred back to the Master upon the old exceptions.

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\* III. *Several exceptions taken to a defendant's answer,*

In Chancery,

Between J. R. - - - - - Complainant,  
 and  
 J. F. and C. R. - - Defendants.

Exceptions taken by the said complainant to the insufficient answer of the said defendant C. R. to the said complainant's bill of complaint.

1st.—For that the said defendant C. R. hath not to the best and utmost of his knowledge remembrance information and belief answered and set forth whether at the time when the reversionary interest of the said C. R. in the said bill mentioned was put up for sale as therein mentioned, the Reverend J. F. R. in the said bill named the father of the said complainant, did not and without the knowledge of the said complainant, request T. C. in the said bill named to attend or procure some person to attend the said sale and purchase the reversionary interest for him the said J. F. R., nor whether the said T. C. did not request J. G. in the said bill named to attend such sale and to purchase the reversionary interest of the said C. R. in the estate in the said bill mentioned for the said J. F. R. as therein mentioned, nor whether the said J. G. did not accordingly attend such sale, nor whether he did not become the purchaser of the said reversionary interest for the said J. F. R. at the sum of £100 or at some other and what sum of money.

2d.—For that the said defendant hath not in manner aforesaid answered and set forth whether in consequence of such purchase the said J. F. R. did not give instructions to his then solicitor for preparing the necessary conveyance of the said reversionary interest in the said estate and premises, and for suffering a recovery and making a complete settlement thereof according to the recommendation of Mr. W. his counsel in the said bill named.

3d.—For that the said defendant hath not in manner aforesaid answered and set forth whether the necessary drafts of such deeds were not accordingly prepared by the said Mr. W. for that purpose, nor whether before such deeds were executed the said J. F. R. did not change his mind respecting the same, and give directions to have fit and proper deeds prepared for conveying the said estate and premises to the said complainant for the said complainant's own benefit, nor whether the same was not so made accordingly,

4th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the said J. F. R. did not himself pay the said sum of £100 out of his own proper monies as the purchase-money of the said estate.

5th.—For that the said defendant hath not in manner aforesaid answered and set forth whether under the circumstances in the said bill stated, the said complainant was or can be considered as a purchaser himself of the reversionary interest aforesaid of the said estate and premises and why, nor whether the said complainant was in fact the purchaser thereof, nor whether he did ever and when advance and pay the purchase-money or any part thereof out of his own proper monies, nor whether the said J. F. R. was not the actual purchaser thereof in the manner and under the circumstances in the said bill stated, and if not why not.

6th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the reversionary interest in the said estate so purchased by the said J. F. R. was not a free gift from him to the said complainant and for his advancement in life, and if not why not; nor whether the said C. R. did not well know thereof at the time of the execution of the aforesaid conveyance to the said complainant, nor whether he did not fully concur and approve thereof, nor whether all or some and which of the rest of the creditors who had proved debts under the said commission did not also fully concur and approve of the same.

7th.—For that the said defendant hath not in manner aforesaid answered and set forth whether the sale of the reversionary interest aforesaid to the said J. F. R. did not take place in the month of June —, or at some other and what time, nor whether the conveyance to the said complainant did not take place in the month of January —, or at some other and what time.

8th.—For that the said defendant hath not in manner aforesaid answered and set forth whether upon the death of his father the said J. F. R. in the month of March — or at some other and what time the said complainant did not enter into possession of the said estate under and by virtue of the said conveyance, nor whether he hath not ever since been in the undisturbed possession thereof without any claim being made by or on the part of the said C. R., or the validity of the transactions and conveyance in the said bill stated being questioned by him.

9th.—For that the said defendant hath not in manner aforesaid answered and set forth whether under all the circumstances in the said bill stated the said C. R. hath any and what claim upon the said estate and premises, nor whether he is entitled to question the

validity of the said complainant's title to the said estate, nor whether the said complainant at any time and when executed any declaration of trust of the said estate and premises or any part thereof to or in favor of him the said C. R.

In all which particulars the said complainant excepts to the answer of the said defendant C. R. as evasive imperfect and insufficient, and humbly prays that the said defendant C. R. may be compelled to put in a full and sufficient answer thereto.

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## SECT. II.

## EXCEPTIONS TO REPORTS(1).

\* I. *Exceptions to a Master's report relating to co-partnership accounts* (2).

In Chancery.

Between T. J. Briggs - - Complainant,  
and  
J. Smith, Mark Briggs &c. [*inserting  
all the names*] - Defendants,  
by original and amended bill.  
And between &c. &c. [*stating the names of the  
parties,*]  
by supplemental bill.

Exceptions (\*) taken by the said M. B. one of the defendants in the said original and amended bill and supplemental bill named (†), to the report of J. S. H. esq. one of the Masters of the High Court of Chancery to whom the said causes stand referred, made in pursuance of the decree made on the hearing of the said causes bearing date the — day of —.

1st *Exception.*—For that the said Master hath in and by his said report certified that he has charged this defendant &c. &c. Whereas

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(1) In what cases it becomes necessary to take *objections* to the draft of the Master's report as a foundation for exceptions, see 2 Madd. Ch. Pr. 509; 2 Turn. Ch. Pr. 224, 6th edit.

Where one general exception is taken to the Master's report including several distinct matters, and the report appears right in any one instance, the exception must be over-ruled; *Hodges v. Salomons*, 1 Cox, 249.

(2) Where objections have been previously taken to the draft of the report, and any one of the exceptions assigns matter not comprised in the objection upon which it is intended to be grounded, that exception will be irregular, and as it should seem must be over-ruled; 2 Turn. Ch. Pr. 224.

As the matter of exception must, if not literally, at least in substance, be founded upon the objections to the draft of the report, the following notes marked (\*) and (†), will sufficiently point out to the student the frame of the objections on which the above exceptions were founded:

(\*) Objections taken by the said M. B. &c.

(†) In framing objections, insert these words: 'to the draft of the report of' &c. 'to be made in pursuance of' &c. And in the statements

the said Master ought to have certified that he found this defendant had expended the further sum of &c.

2d *Exception*.—For that the said Master hath in and by his said report certified that he found that all monies &c.

3d *Exception*.—For that the said Master hath in and by his report certified that he finds that the several balances and sums thereinbefore stated are the clear profits of such co-partnerships respectively as in the said report mentioned, except as to the sums thereinbefore mentioned to be unaccounted for by this defendant, and as to them he was unable to ascertain the clear profits of the said co-partnerships for the reasons expressed; Whereas the said Master ought to have certified that the several sums of money stated by this defendant in his examination to have been the profits made by this defendant on &c. &c.

Wherefore the said M. B. excepts to the said Master's report, and humbly appeals therefrom to the judgment of this honorable court.

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\* II. *Exceptions to a Master's general report taken on the ground of the allowances made to the defendant an executor, in the accounts subjoined to the report by way of schedule (3).*

In Chancery.

Between Ann Freeman &c., - Complainants,  
and  
W. Fairlie - - Defendant.

Exceptions taken by the said complainants to the general report of — one of the Masters of the High Court of Chancery to whom the said cause stands referred, made in pursuance of the decree made on the hearing of the said cause bearing date the 3d day of February 1816.

1st *Exception*.—For that the said Master hath in and by his said general report and the second schedule to which it refers allowed to

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of the several causes of objection, instead of the words 'hath in and by his said report certified,' insert these words, 'hath in and by the said draft of his report stated that' &c. And instead of 'ought to have certified' &c. insert 'ought to have stated that' &c. And conclude thus: 'Wherefore the said M. B. objects to the said draft of the said Master's report, and prays that he will re-consider and alter the same.' *Or thus*: 'In all which particulars the said defendant M. B. submits that the draft of the said report ought to be varied and rectified.'

(3) These exceptions were allowed; see *Freeman v. Fairlie*, 3 Mer. 24.

the said defendant by way of discharge various sums of money amounting together to 1835 sicca rupees or thereabouts, being equal to the sum of £229 sterling or thereabouts, by way of commission at the rate of £5 per cent. on principal and interest monies received by the said defendant on account of the personal estate of his testatrix in the pleadings named; Whereas the complainants submit the said sums of money by way of commission or any of them ought not to have been allowed to the said defendant in respect of such his receipts, he the said defendant being an executor, and his testatrix having by a codicil to her will desired her executors would each accept 500 sicca rupees as some small acknowledgment for the trouble they would necessarily have in the execution of the trusts reposed in them.

*2d Exception.*—For that the said Master hath in and by his said general report and the second schedule to which it refers allowed to the said defendant by way of discharge various other sums of money amounting together to 2768 sicca rupees or thereabouts, being equal to £346 sterling or thereabouts, by way of commission at the rate of £5 per cent. on sums annually credited by the said defendant in his account as executor for interest from time to time in his hands, and with which interest he is charged in the first schedule to the said report; Whereas the complainants submit the said defendant is not entitled to and ought not to have been allowed such last-mentioned commission for the following (among other) reasons:—*First*, Because the sums credited for interest were not in fact received by the said defendant and invested as part of the personal estate of the said testatrix, but were (as appears by the two examinations of the said defendant) together with the aforesaid principal monies mixed with the funds of the different mercantile houses in which the said defendant was and is a partner and used in their business of merchants; And *secondly*, Because by virtue of the said decree the said Master is directed to inquire what interest and profit has been made by the said defendant of the personal estate of the said testatrix, and what balance he had from time to time in his hands belonging thereto, and that therefore the complainants are advised the said Master is not at liberty to make to the said defendant any allowance or abatement from the interest admitted by the said defendant to have been made by him, or with which he has submitted to be charged.

Wherefore &c.

\* III. *Exceptions to a Master's report in favor of a title depending on the validity of a recovery* (4).

In Chancery.

Between Christopher Shapland, Complainant,  
and  
James Smith, - - Defendant.

Exceptions taken by the said defendant to the report of J. E. esq. one of the Masters of the High Court of Chancery to whom this cause stands referred by the decree made therein on the 18th day of May 1778, whereby it was referred to him to see whether the plaintiff can make a good title to the estate in question to the defendant, and which report bears date the 27th day of November in the year 1799.

1st *Exception*.—For that the said Master has by his said report certified that he was of opinion that the plaintiff, together with the trustees and mortgagees, may make a proper conveyance by lease and release to the purchaser (under a good title) in fee, and that the term of fifty years therein mentioned under the settlement of 1731 in the said report mentioned, the term of ninety years therein mentioned in the deed of September 1770 in the said report mentioned, and the term of one thousand years in the said report mentioned to have been created the 21st of April 1772, must be assigned to a trustee for the purchaser to attend the inheritance; Whereas the said defendant apprehends that the said Master ought to have certified that a good title could not be made by the plaintiff to the said defendant for the reasons following: *First*, For that it appears by the abstract left by the said complainant with the said Master, that by the indentures of lease and release of the 15th and 16th days of August 1781 therein mentioned the estates in question were conveyed from and after the death of C. S. and Mary his then intended wife therein named, to trustees in moieties for the term of fifty years in each moiety, in trust for raising £10,000 for the younger children of the said marriage as the said C. S. should by his will

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(4) See *Shapland v. Smith*, 1 Bro. Ch. Ca. by Belt, p. 74; 2 Turn. Ch. Pr. 137.



direct; and it appeared to the said Master that there were two younger children of the said marriage, viz. C. S. and R. S.; But it has not been made to appear before the said Master that the said two several terms of fifty years have been assigned to attend the inheritance, nor in whom the same are now vested; And *secondly*, For that it appears by the said abstract that J. S. who by the abstract is stated to be seised in fee of the lands in question, by his will dated the 21st of June 1770 devised the same to trustees to hold to them their heirs and assigns for ever, upon trust and to and for the uses intents and purposes thereafter mentioned; viz. in the words following: "Upon trust that they the said J. B., J. S. and G. S. and their heirs and assigns shall yearly and every year by equal quarterly payments by and out of the rents and profits of the said premises after deducting rates taxes repairs expenses and outgoing, pay such clear sum as shall then remain unto my brother C. S. and his assigns for and during the term of his natural life; And from and after his decease, To the use and behoof of the heirs male of the body of the said C. S. lawfully to be begotten as they and every of them shall be in priority of birth; And in default of such issue, I give and devise the same unto C. S. son of the said G. S. for his life, and after his decease unto the said J. B., G. S. the elder, and J. S. and their heirs upon trust to support the contingent remainders from being defeated; And after their decease, To the use and behoof of the right heirs of the body of the said C. S. lawfully begotten; And in default of such issue, I give and devise the same unto his brother G. S. and the heirs male of his body lawfully issuing; And in default of such issue, To J. S. his brother and the heirs male of his body lawfully begotten; And in default of such issue, To his brother G. S. and the heirs male of his body lawfully begotten; And in default of such issue To the right heirs of the said J. S. for ever;" And the said defendant therefore humbly submits to the judgment of this honorable court whether by virtue of such will the legal estate of and in the premises did not become vested in the said trustees, and whether the said C. S. the son took any greater interest in the lands than for his natural life and to his first and other sons in tail, and whether therefore the recovery in the said abstract mentioned to have been suffered by the said C. S. in Michaelmas Term 1770 is not void, and whether J. S. the son of the said C. S. (which J. S. is now living but not a party to the suit mentioned in the report) hath not now as the first son of the marriage an estate tail in the said land; And *thirdly*, For that it appears by the said abstract that by indenture dated the 5th day of October 1775 the said C. S. and E. his wife declared the uses of a

fine levied by them in Trinity Term then last of the estates in question to and for the confirmation of certain indentures of lease and release of the 13th and 14th days of July then last, whereby after reciting various mortgages, he conveyed the estates in question to trustees and their heirs in trust to be sold; and for securing the payment of several sums of money therein mentioned, and also for securing a further sum of £900, and for raising £6000 upon trusts intended to be mentioned in an indenture of the 6th of October 1775, whereby the said C. S. in consideration of his marriage and of his wife's portion of £6000 and in consideration that he had previously to his said marriage agreed to settle on her in case she survived him and on her children a competent provision, and in consideration that she had acknowledged the said fine, and of the love which he bore to his wife and children, and in performance of the said agreement, did give grant and appoint unto trustees therein named the sum of £6000 (parcel of the surplus money for which he had contracted to sell the estates to the plaintiff), Upon trust that after the £6000 should be raised by the said trustees, they should place the same out at interest and pay the same to the said C. S. for his life, and after his decease to the said E. S. for her life, and after her decease, Upon trust to pay and divide the said £6000 to and among their then children, and to and among such other children as they should have, in manner therein mentioned; but as it is not declared by the said indenture that the receipt of the trustees should be a sufficient discharge for the payment of the said sum of £6000, and it has not been made appear before the Master what the agreement was which is recited in the said deed to have been made previously to the said marriage for making a provision for the wife and children, and neither the trustees for sale of the said estates nor the children the said marriage are parties to the suit, therefore the said defendant humbly submits whether any proper discharge can be given for the said sum of £6000 (part of the purchase-money), and whether the purchaser can therefore safely pay the said purchase-money.

*2d Exception.*—For that as the said Master hath certified that the plaintiff together with the trustees and mortgagees may make a proper conveyance by lease and release to the purchaser under a good title in fee, and it appears by the abstract brought in before the said Master that there are various mortgages and incumbrances upon the estates in question in this cause, and none of such mortgages or deeds have been brought in or produced before the said Master, and therefore it did not appear to the said Master, nor is it stated by the said report what incumbrances there are upon the

said estates, nor who are the necessary parties to make a legal conveyance thereof, supposing the said C. S. took an estate tail in the lands in question and legally barred the same and all the remainders over, therefore the said defendant humbly insists that the said Master ought either to have stated by his said report that the said C. S. could not alone make a good title to the estate in question, or should have set forth particularly who by name are necessary parties to make a legal conveyance thereof.

Wherefore the said defendant doth except to the said Master's said report, and appeals therefrom to the judgment of this honorable court.

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\*IV. *General exception to a Master's certificate of insufficiency, under an order of reference to look into the plaintiff's bill and the defendant's answer and the exceptions taken thereto, and to certify whether the answer be sufficient in the points excepted to or not (the defendant not submitting to answer the exceptions) (5).*

In Chancery.

Between J. S. and A. his wife, - Plaintiffs,  
and  
G. B. and others, - - Defendants.

An exception taken by the said defendant G. B. to the report of Sir J. S. bart. one of the Masters of this court to whom the said cause stands referred, bearing date the 15th day of November 1822.

For that the said Master hath in and by his said report certified that the answer of the said defendant G. B. is insufficient in all the points excepted unto; Whereas the said Master ought to have disallowed all and every the exceptions taken by the said complainants to the said answer of the said G. B., and to have reported that the said answer is insufficient in all the points excepted unto by the said complainant.

In all which particulars the said defendant G. B. excepts to the said Master's said report.

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(5) See 1 Turn. Ch. Pr. 788, 9, 6th edit.

\*V. *Exceptions to a Master's report of insufficiency, after a second answer put in by the defendant.*

In Chancery.

Between J. S. and A. his wife, - Plaintiffs,  
and  
G. B. and others, - - Defendants.

Exceptions taken by the said defendant G. B. to the report of P. H. esq., one of the Masters of this honorable court, made in this cause and dated the 14th day of March 1803.

*1st Exception.*—For that the said Master hath in and by his said report certified that the said defendant's first and second answers put in to the said complainants' bill are insufficient as to part of the 10th exception taken by the said complainants to the said defendant's said answers, and the said Master hath thereby certified that the said defendant hath not answered and set forth according to the best of his knowledge remembrance information and belief, for whose benefit and on whose account the trade in the pleadings in this cause and in the said report mentioned hath been carried on from time to time since the same ceased to be carried on for the benefit or on the account of the persons interested in the estate of A. G. in the said report named, or the income thereof; Whereas the said Master ought not to have not so certified.

*2d Exception.*—For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient in the 12th and 13th exceptions throughout, which the said Master ought not to have done.

*3d Exception.*—For that the said Master in and by his said report hath certified that the said defendant's said answer is insufficient in part of the 17th exception taken thereto by the said complainants; Whereas the said Master ought not to have so certified.

*4th Exception.*—For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient as to the 19th, 20th, 21st, 22d, 23d, 27th, 28th, and 29th exceptions throughout; Whereas the Master ought not to have so certified.

In all which said particulars the said defendant G. B. doth except to the said Master's said report, and humbly appeals therefrom to the judgment of this honorable court.

\* VI. *Exceptions to a Master's certificate of insufficiency, under an order of reference to certify whether an examination of a creditor going in under the decree in a creditor's suit, to interrogatories settled by the Master, is sufficient or not* (6).

In Chancery.

Between A. P. and another, - - Plaintiffs,  
and  
Ann D. widow, - - - Defendant.

An exception taken by C. C. who claims to be admitted a bond-creditor of P. D. to the report of F. P. S. esq. one of the Masters of this court, dated the 10th March 1810.

For that the said Master hath in and by his said report certified that the answer and examination of the said C. C. to interrogatories settled by the said Master for the examination of the said C. C. is insufficient; Whereas the said Master ought to have certified that the said answer and examination is sufficient.

In all which particulars &c.

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(6) See *Stanyford v. Tudor*, 2 Dick. 548; *Paxton v. Douglas*, 16 Ves. 239, 244; 2 Turn. Ch. Pr. 152, and the note *ibid*.

CHAPTER XV.

INTERROGATORIES.

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SECT. I.

FORMS OF TITLES, AND OF THE FIRST AND LAST GENERAL  
INTERROGATORIES.

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In Chancery.

1. Title of interrogatories, in Chancery, for examination of witnesses in chief on the part of the plaintiff.

Interrogatories to be administered to witnesses to be produced sworn and examined in a certain cause now depending and at issue in his Majesty's High Court of Chancery at Westminster, wherein W. C. is complainant and M. W. is defendant, on the part of the said complainant.

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In Chancery.

2. Title of interrogatories, in Chancery, for examination of witnesses in chief on the part of some of several defendants.

Interrogatories to be administered to witnesses to be produced sworn and examined in a certain cause now pending and at issue in his Majesty's High Court of Chancery at Westminster, wherein by original and amended bill J. H., C. H., &c., &c., C. H. and A. H., infants under the age of twenty-one years, by the said L. H. their father and next friend, C. V. &c. &c., are plaintiffs, and T. R. B. and D. his wife, T. W. B. &c., and E. B. and H. B. infants under the age of twenty-one years, by the said T. R. B. their guardian, are defendants; and wherein by supplemental bill J. H., C. H., &c., &c., are plaintiffs, and T. R. B. and D. his wife, &c. &c., are defendants, on the part of all the said defendants except the said defendants J. J. and G. V.

In the Exchequer.

Interrogatories to be administered to witnesses to be produced sworn and examined in a certain cause now depending and at issue in his Majesty's Court of Exchequer at Westminster, wherein A. G. and C. D. are complainants, and E. J., J. C., T. W. G., and H. G. are defendants, on the part and behalf of the said complainants.

3. Title of interrogatories, in the Exchequer, for examination of witnesses in chief on the part of the plaintiffs.

In Chancery.

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Between A. B. - - - - - Complainant,  
and  
C. D. - - - - - Defendant.

Interrogatories to be exhibited for the examination of witnesses on the part and behalf of the said complainant, to be produced sworn and examined pursuant to the decree made on the hearing of the said cause bearing date —.

4. Title of interrogatories, in Chancery, for examination of witnesses on the part of the plaintiff pursuant to a decree.

In Chancery.

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Between A. B. and C. D. - - Complainants,  
and  
E. F. and G. H. - - Defendants.

Interrogatories to be exhibited by the said complainants before W. G. esq. one of the Masters of this honorable court, for the examination of the creditors of T. H. esq. deceased in the pleadings in this cause named and of their witnesses, in pursuance of the decree or decretal order of this court made on the hearing of this cause bearing date —.

5. Title of interrogatories, in Chancery, for examination of creditors and their witnesses pursuant to a decree.

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## In the Exchequer.

Between T. H. - - - - - Complainant,  
and  
S. A. - - - - - Defendant.

6. Title of interrogatories, in the Exchequer, for examination of a defendant pursuant to a decree.

Interrogatories to be exhibited on behalf of the said complainant before A. M. esq. the deputy to his Majesty's Remembrancer of this honorable court, for the examination of the said defendant pursuant to the decree made on the hearing of this cause, bearing date —.

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## In Chancery.

7. Title, in Chancery, in the case of a contempt for signing a counsellor's name to a bill without his authority.

Interrogatories to be administered to L. M. solicitor to the bill filed in his Majesty's High Court of Chancery on behalf of A. B. against C. D.

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## In Chancery.

8. Title of interrogatories, in Chancery, for examination of a person *de bene esse*, pursuant to an order made in a cause.

Interrogatories to be exhibited to D. G. of —, for the examination of the said D. G. *de bene esse* in a certain cause now depending in the High Court of Chancery, wherein J. P. is the plaintiff, and J. S. and T. S. are the defendants, pursuant to an order of this honorable court bearing date —, on the part and behalf of the said complainant.

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## In Chancery.

Between H. R. an infant by J. M. his next  
friend, - - - - - Plaintiff,  
and  
T. J. W. and J. S. B. Defendants.

9. Title of an interrogatory, in Chancery, for examination of a person *pro interesse suo*, pursuant to an order made on petition.

An interrogatory to be exhibited to G. R. of —, before F. C. esq. one of the Masters of this honorable court, for the examination of the said G. R. *pro interesse suo* in certain premises in the pleadings in this cause mentioned pursuant to an order of this honorable court bearing date —, made on the petition of the said G. R.



*Another Form.*

In the Exchequer.

Between A. B. - - - - - Complainant,  
and  
C. D. - - - - - Defendant.

Interrogatories to be exhibited before A. M. esq. the deputy to his Majesty's Remembrancer of this honorable court, for the examination of the said defendant C. D. *pro interesse suo* in certain estates in the pleadings in this cause mentioned, pursuant to an order made by the said court bearing date —.

10. Title of interrogatories, in the Exchequer, for examination of a defendant *pro interesse suo*.

In Chancery.

Between A. C. - - - - - Complainant,  
and  
T. H. - - - - - Defendant.

Interrogatories to be exhibited on the part of the said complainant for the examination of A. B. as to his interest in the event or decision of this cause, the said A. B. being a witness produced sworn and offered to be examined in the said cause on the part and behalf of the said defendant.

11. Title of interrogatories, in Chancery, for examination of a witness as to his interest in the matters in issue.

In Chancery.

Interrogatories to be exhibited to witnesses pursuant to an order of his Majesty's High Court of Chancery bearing date the — day of —, on the part of A. B. complainant, and made in a certain cause there depending and at issue wherein the said A. B. is complainant and C. D. is defendant, to discredit the testimony of E. F. and G. H. two witnesses heretofore examined in the said cause on the part of the said defendant (a) upon interrogatories.

12. Title of interrogatories, in Chancery, to the credit of witnesses examined on the part of the defendant.

(a) If the witnesses were examined before commissioners, proceed thus:—

'upon interrogatories by virtue of a commission issued out of the said court directed to G. R. and others for the examination of witnesses in the said cause.'

## In the Exchequer.

13. Title of interrogatories, in the Exchequer, to the credit of witnesses examined before a Baron on the part of the plaintiff.

Interrogatories to be exhibited to witnesses by or on behalf of C. D. defendant before Sir R. R. knt, one of the barons of his Majesty's Court of Exchequer at Westminster, pursuant to an order of the said court bearing date the — day of —, and made in a certain cause there depending and at issue wherein A. B. is complainant and the said C. D. is defendant, to discredit the testimony of E. F. and G. H. two witnesses heretofore examined before the said baron on the part of the said complainant in the said cause.

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*First General Interrogatory.*

As to the witness's knowledge of the parties in the cause.

Do you know the parties complainant and defendant [*or*, complainants and defendants] in the title to these interrogatories named or [any or] either and which of them, and how long have you known them respectively or such [one] of them as you do know? (*b*) Declare the truth, and your utmost knowledge remembrance and belief herein. [*Or thus*: Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief with your reasons fully and at large (*c*).]

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(*b*) Sometimes the first interrogatory is also directed to an inquiry as to the witness's knowledge of deceased persons, as thus:—

'And did you or not know J. A. and C. his wife deceased the late grandfather and grandmother of the said complainant, and F. A. deceased the late uncle of the said complainant, in the pleadings of this cause respectively named, or any or either and which of them in their his or her life-time, and for any and what length of time before their his or her decease?' Declare &c.

*Or*, to an inquiry as to the witness's business or profession, as thus:—  
'And what profession or business in life do you follow, and where and how long have you followed the same?' Declare the truth, and your knowledge herein.

(*c*) These are the general forms used in the conclusion of interrogatories according to circumstances; in the subsequent pages reference is made thereto thus: Declare &c.

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*The concluding General Interrogatory.*

Lastly.—Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant therein [*or*, of the said defendants or any or either and which of them therein]? If yea, Set forth the same and all the circumstances and particulars thereof fully and at large according to the best of your knowledge remembrance and belief as if you had been thereto particularly interrogated.

*Or thus :*

Lastly.—Do you know or can you set forth any other matter or thing which may in any wise tend to the benefit of the said defendants or of either of them in this cause, other than the said defendants J. J. and G. V.? If so, Set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge remembrance and belief together with your reasons at large.

Where interrogatories are exhibited on the part of some of several defendants.

## SECT. II.

FORMS OF INTERROGATORIES FOR THE EXAMINATION OF  
WITNESSES IN CHIEF (1).

*To prove the delivery of the abstract of the plaintiff's title to the defendant;*

Whether or no did you at any time and when as the solicitor of the said complainants deliver to the said defendant or to any person and whom by name on his part

(1) Interrogatories for the examination of witnesses must be signed by counsel, and should only extend to points material and not confessed; *Bea. Ord. 70, 71, 184, 273, 312*; if the interrogatories are leading, or if they are scandalous, or both scandalous and impertinent, they will be suppressed with costs; see *2 Madd. Ch. Pr. 412*; *2 Fowl. Ex. Pr. 127*; *White v. Fussell, 19 Ves. 112, 2d edit.*

Interrogatories framed thus, 'Did you not do or see,' &c. 'Did you not hear that,' &c. are accounted leading.

Where the plaintiff's christian name is mistaken in the title of the interrogatories the depositions cannot be read, nor will the court permit the title to be amended; *White v. Taylor, 2 Vern. 435.*

Interrogatories administered to witnesses are all strung together, and the party by his agent points out the particular interrogatories or parts of interrogatories to which he wishes the witness to be examined.

A witness may object to answering questions which may have a direct tendency to criminate himself, or render him liable to disabilities or pecuniary penalties, (see *Paxton v. Douglas, 16 Ves. 242, 3.*) but a witness cannot demur to being examined because the question is not pertinent to the matter in issue; *Ashton v. Ashton, 1 Vern. 165*; if interrogatories be improperly exhibited to a witness (as if for instance he is a party interested) he must demur, and must state his reasons on oath; see *2 Madd. Ch. Pr. 408*; *Parkhurst v. Lowten, 2 Swanst. 204*; *Bowman v. Rodwell, 1 Madd. Rep. 266*; *Nightingale v. Dodd, Mos. 229.*

Where a witness had in his examination omitted to state material facts, which he had stated in writing previously to his examination that he could depose to, the court refused to permit him to be re-examined; *Asbee v. Shipley, 5 Madd. 467*; and see *Lord Abergavenny v. Powcell, 1 Mer. 130*; *Bott v. Birch, 5 Madd. 66.*

The examination of witnesses being foreigners must be in English, and the interrogatories must for that purpose be translated into the language of the deponents, and their answers translated by sworn interpreters; *Lord Belmore v. Anderson, 4 Bro. Ch. Ch. 90.*

any abstract of the title of the said complainants to the estates and premises in the pleadings mentioned? Whether or no did the said defendant or any person and who on his part at any time or times and when and how make to you any and what objection to the said title, and what answer did you thereupon make, and if by writing set forth the same in the words and figures thereof, and what afterwards passed between you and the said defendant or any other person and whom on his part respecting the said title or the agreement for purchase in the pleadings mentioned? Set forth &c.

*whether any objection was made to the title,*

*and what passed relative to the title or agreement for purchase.*

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\* Were you at any time and when and by whom and on whose behalf furnished with an abstract of the title of the said complainants to the premises described as lot 2 in the pleadings of this cause mentioned? And did you at any time or times apply to any person or persons and whom by name as the solicitor or solicitors of the said complainants for a copy or abstract of the alleged lease under which the said premises were stated to have been let? If yea, What passed between you and the solicitors for the said complainants at the time of making such application relative to such alleged lease? Declare &c.

*To prove that witness as solicitor for the defendant was furnished with an abstract of title to an estate sold by the plaintiffs,—his application for an abstract of the lease under which the estate was stated to have been let, and what passed upon such application.*

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\* Had or not the said R.W. as you know or do for any and what reason believe access to the said M.W. his wife, or was he or not in her company or did he or not see her at any and what times or time from the month of—— to——? And if yea, When and how often and at or about what times or time and for what space of time at each time and where and on what occasion? Where did the said R.W. live or reside during all such period of time as you know or do for any and what reasons believe? Declare &c.

*To prove whether a husband had access to his wife during a particular period and when,*

*and where he resided.*

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\* Whether or not did the said defendant C. L. as you know or do for any and what reason believe, deliver or cause to be delivered unto the said S. D. F. in his life-time a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was

*To prove the delivery of an account of monies owing from a deceased person to the defendant,*

*in what language written, when delivered, and the particulars of the debt,*

*and whether the deceased examined the account;*

*To prove that he delivered the same to the witness, that witness by his direction made a copy thereof, and in what language, the delivery thereof to the deceased,*

*that he examined the same and made observations thereon;*

*To prove the copy in the possession of the witness as an exhibit, and the hand-writing,*

*That witness may translate the copy into English and the observations made thereon, distinguishing the parts written by the witness and by other persons.*

or were due or owing by or from the said S. D. F. to the said defendant C. L.? If yea, In what character and language was such account or writing written or made out, and when or about what time was the same delivered to the said S. D. F., and what was or were the particular or particulars of such debt or debts or sum or sums of money, and how much did the same amount unto in the whole as you know remember or believe? Whether or no did the said S. D. F. as you know or do for any and what reason believe, peruse or examine the said account? Did or did not the said S. D. F. ever deliver the said account to you? If yea, When and about what time and for what purpose did he deliver the said account to you? Did you or did you not by the order or direction of the said S. D. F. or otherwise and how, at any time and when make or write a true copy of the said account? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time and when and by whom delivered to the said S. D. F.? And did or did not the said S. D. F. at any time or times and when peruse and examine the said copy, and did he or did he not in his own hand-writing or otherwise and how and in what language and character and at or about what time or times make or write any and what minutes memorandums or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you or any and what parts and part thereof of your own hand-writing? If yea, How much or what part or parts thereof is or are of your own hand-writing, and how much and what part or parts thereof is or are of the hand-writing of any other person or persons and whom as you know or do for any and what reason believe? Is or is not the said paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) and all the minutes memorandums and observations written or made thereon into and set forth the same in the English language, and in making such translation, distinguish and point out the English of so much or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons and whom; Declare &c.

¶ Were you or not a party as a trustee for sale or otherwise and how, to certain and what indentures of lease and release bearing date the 9th and 10th days of March 1792, in the pleadings in this cause stated, or to some or one and which of them? And were you or not for some length of time and from and to what period in some and what manner in the employ of T. E. and G. D. both now deceased, in the pleadings in this cause named? And do you or not by some and what means know whether some and what account did not exist between the said T. E. and G. D. or one and which of them in their or his life-time with W. J. deceased, the late plaintiff in this cause? Did you or not as a trustee for sale as aforesaid, ever and when sell and dispose of the respective houses and premises of which you were a trustee for sale under such indentures of lease and release as aforesaid? And was there or not some and what account open and unsettled between the said W. J. deceased and the said T. E. and G. D. or with one and which of them at the time the said houses and premises were respectively so sold and disposed of by you? If yea, Was such account ever to your knowledge settled and adjusted between them or any and which of them, and was or not such account an open and unsettled account at the time of the death of the said W. J. as you know or for some and what reason believe? And if such account had ever been stated settled and adjusted between the said T. E. and G. D. and the said W. J. in his life-time, should you or not from your connexion or by your employment with the said T. E. and G. D. or by some and what other means have known thereof? Do you or not know whether the said W. J. in his life-time made or caused to be made any and what applications or application to the said T. E. and G. D. or to one and which of them for a statement of or to come to a settlement of the said account existing between them? If yea, Set forth the number of such applications and the respective times or time in particular when the said W. J. made or caused to be made such applications or application, and the nature thereof, and when and by whom made, and in whose presence, and upon what occasions or occasion, and on or about what date in particular was the last time the said W. J. made or caused to be made such application to the said T. E. and G. D. or to either and which of them, and what passed between the said parties respectively at the respec-

*To prove that witness was a party as a trustee to certain deeds;*

*That he was in the employ of certain persons, and that an account existed between them and a deceased plaintiff;*

*That witness, as trustee, sold certain houses;*

*That at the time of such sale, an account existed unsettled between the deceased plaintiff and certain other persons;*

*Also to prove the applications made by the deceased plaintiff for a settlement;*

*and what passed at the time of such applications.*

tive times or time such applications or application were or was made? Declare &c.

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*To prove a statement of accounts between the plaintiff and defendants relative to a testator's estate, what balance was ascertained to be due, and the payment thereof.*

\* Were you or not present at any time and when at the stating of any and what account between the said complainant and the said defendants touching or concerning the estate and effects of the said testator R. F. in the pleadings of this cause named? If yea, Was or were or not any account or accounts touching such estate or effects then settled between them, and was or not any and what balance then settled and ascertained as due to any and which of the said parties, and was or not such balance then paid over, and if not, why and for what reason? Declare &c.

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*To prove the delivery of an attorney's bill, and that an action was commenced for the recovery of the amount.*

Whether or no did you at any time and when deliver to the said defendants or either and which of them, any bill for business done by you on their or either and which of their account not connected with the said cause, and whether or no did you at any time and when cause any and what proceeding to be commenced against the said defendants or either and which of them for the amount of such bill? Declare &c.

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*To prove the production of a book to a person containing certain acknowledgments or memorandums signed by him, and the declarations made by him relative thereto.*

\* Did you or not at any or either and which of the meetings between you and the said — inquired after by the last preceding interrogatory, produce or show unto the said — all or any and which of the acknowledgments or memorandums to which his name appears to be subscribed, and which are written or contained respectively in the — folios of the said produced book marked (A)? And did the said — on any and which of such occasions or on any other and what occasions or occasion and when in particular, say or declare any thing and what unto you or unto any persons or person and whom by name in your presence or hearing relative to such acknowledgments or memorandums, and to his name appearing to be subscribed thereto, and purporting that he had signed the same or any and which of them, or that his name appearing to be



subscribed thereto or to any and which of them was in his own hand-writing or to any such or the like effect? Set forth how and in what manner the said — expressed himself at such times or time in relation thereto? Declare &c.

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\* Whether or not did the said defendants or any and which of them commence an action at law against J. F. the agent of the said complainants in the said bill named? If yea, Set forth when such action was commenced, and the nature of and object of the action? Whether or not did the said J. F. plead to such action? If yea, Declare the nature of his defence; Whether or not did such action come on to be tried? If yea, Whether or not did the plaintiffs in such action get a verdict? If yea, Whether or not did the court of King's Bench set aside such verdict and direct a new trial to be had of the said action? Whether or not did such new trial come on to be tried at the summer assizes held for the county of Y. for the year 1818? If yea, Were you present at such trial? If yea, Declare to the best of your remembrance what passed thereat, and how and in what terms the judge charged the jury; Whether or not were the jury desirous to find a special verdict; Whether or not did the judge make a minute of it in his notes, and if yea, Set forth the purport and effect of such minute; Whether or not was it agreed between the plaintiffs and defendant in the said action that the amount of the damages to be recovered by the plaintiffs in the said action should be left to arbitration? If yea, Whether or not was any arbitrator appointed? If yea, Has such arbitrator ever made his award? If yea, Declare the damages awarded by the said arbitrator to the plaintiffs in the said action? Declare &c.

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\* Did you at any time or times and when and at whose request or in pursuance of any directions or instructions given to you by any person or persons and whom by name, cause any and what advertisement or advertisements to be inserted in any and what public paper or papers relating to or for the discovery of the said A. G., and was or were such

*To prove that the defendants commenced an action against the plaintiff's agent, and when, and the nature thereof, and of the defence thereto;*

*That the same came on to be tried, that the plaintiffs got a verdict, which the court of K. B. set aside, and directed a new trial;*

*That the same came on at the assizes, and what passed on the trial, and the judge's charge to the jury;*

*That the jury were desirous to find a special verdict, the minute thereof made by the judge;*

*The agreement to refer the amount of damages to arbitration, and what amount was awarded by the arbitrator.*

*To prove advertisements being inserted in the public papers, for the discovery of a person, and by whose direction;*

*and whether the witness has heard of the individual, or had any applications respecting him since the advertisements.*

advertisement or advertisements inserted in such public paper or papers at any time or times and when as you know or for any and what reason believe? Have you heard of the said A. G. or had you any and what application or applications made to you with respect to him or the matter comprised in such advertisement or advertisements since the same was or were so inserted? Declare &c.

*To prove that witness was employed in preparing an agreement, and the directions given respecting the terms thereof.*

\* Were you or not employed and when by the said complainant and defendant or either and which of them to prepare the agreement in the said former interrogatory mentioned? If yea, Had you any and what directions from the said defendants respecting the terms of the said agreement, and concerning the land-tax in the said agreement mentioned, and what did the said defendant say to you or in your presence or hearing as to the said land-tax and the sum of £200 to be paid by the plaintiff to the said defendant, and were you informed by either and which of the said parties for what consideration the said premium or sum of £200 was to be paid? Declare &c.

*To prove a parol agreement respecting the plaintiff's residing with the defendant.*

\* Did you or not at any time and when hear the said complainant make any proposition to the said defendant respecting his the said complainant's residing with the said defendant in his house, and was any and what agreement come to between the said complainant and the said defendant respecting such matter, and did you or not hear upon that or any other and what occasion the said complainant make any and what promise to the defendant respecting the amount and nature of the recompense which the defendant was to receive from the said complainant for his residing in the said defendant's house? Declare &c.

*To prove that witness made an allotment of certain lands, and to whom, and when he delivered the allotment;*

\* Did you or not and by whose desire or direction make any and what division or allotment of the lands in the pleadings of this cause mentioned? If yea, To whom and when did you deliver such division or allotment, and

did or not the said defendant J. P. acquiesce in or approve of such allotment, and did he take possession of his part or share? Did you or not at any time afterwards and when review or reconsider such allotment and upon what occasion and by whose desire, and did you or not make any second allotment or any and what alteration in your former allotment, and was or not the said division or allotment made by you a fair impartial and just division or allotment? Declare &c.

\* Do you or not know whether the said complainant entered upon and enjoyed any and which of the lands in the pleadings in this cause mentioned in severalty or not? If yea, State what particular lands were enjoyed by the plaintiff and what by the defendant.

*that defendant acquiesced therein, and took possession of his share; that witness afterwards reviewed the allotment, and by whose desire and what alterations he made therein.*

*To prove that the plaintiff entered upon the lands allotted to him in severalty.*

\* Are you acquainted with the manner of purchasing annuities on lives and the value thereof, and the way in which the same are secured in the public funds? If yea, How long have you been acquainted therewith? What was the value of an annuity of £—— during the life of a person aged —— in the month of —— according to the method of computing the value of annuities upon lives, and according to the common and usual course of business in transactions of that nature? Declare &c.

*To prove the value of a life annuity.*

\* Was or not the said complainant T. C. at any time and when to your knowledge or belief employed as the attorney or agent of the said defendant S. A.? If yea, Declare when the said T. C. was so employed by her or relative to her affairs, and for what length of time, and whether generally as the confidential attorney or agent of the said S. A. as you know or believe, and set forth the grounds upon which you found such your knowledge or belief; Declare &c.

*To prove that the plaintiff was employed by the defendant as her confidential attorney or agent, and for what period.*

\* Look upon the book entitled —— now produced and shown to you at this the time of your examination, marked with the letter (A), and in the pleadings in this cause mentioned; Who by name wrote or was the author or composer

*To prove who was the author of a book or reputed so to be, and whether it was an original composition*

of the said book, or who was and is reputed so to be? Is the said book an original composition, or a copy of any other and what work? Declare &c.

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*To prove an act of bankruptcy by keeping house.*

\* Did you or not know A. B. in the pleadings of this cause named, and previously to —, and for any and what time before? If yea, Did the said A. B. at that time and for any and what length of time before carry on any and what trade or business and where, and do you or not previously to the said — recollect any person and whom by name calling at the house or dwelling of the said A. B. for money, and was or not such person a creditor of the said A. B., and was or not the said A. B. at home at such time and did he or not see the person who so called, or what answer was given or sent to such person, and was the answer given or sent by the direction of the said A. B. or with his privity or consent? Declare &c.

*To prove an act of bankruptcy by lying in prison.*

\* Did or not the said T. M. in the pleadings of this cause named previously to the — day of — and from and up to what time in particular, carry on any and what trade or dealing and in what sort of merchandize? Was or not the said T. M. a prisoner in the Fleet Prison, and when did he first become a prisoner there and for and upon what account was he imprisoned, and how long did he continue a prisoner without being bailed or discharged, and what charges or detainers were there lodged against him during the whole time of such his imprisonment? Declare &c.

---

*To prove a remittance of bills of exchange in the lifetime of a deceased person,*

\* Whether or no did the said defendant C. D. in the lifetime of the said S. D. send remit or deliver unto the said S. D. any bill or bills of exchange? If yea, For what sum or sums of money, or of what value or amount was or were such bill or bills of exchange respectively and in the whole, and when or about what time or times was or were such bill or bills of exchange so sent remitted or delivered, and was or were or not the sum or sums of money mentioned in or secured or made payable by the said bill or bills of exchange or some and which of such sums of money received by or paid to the said S. D. or to his order or for his use when

*that the same were duly paid as they became due,*

and as the same became due and payable or soon afterwards or at any other and what time or times? And did or did not the said S. D. in his life-time and when repay the said defendant C. D. or satisfy him the said sum or sums of money or any or either and which of them or any and what parts or part thereof? Declare &c.

*and whether the deceased repaid any part of the amount thereof.*

Whether or no did you draw and deliver to the said complainant any and what number of bills of exchange and to what amount for the produce of the said cargo upon the said defendants T. R. and C. S., and did you or not at or about that time or at any time and when ship on board the said ship called the M. or any other and what ship or ships and consign to the said defendants T. R. and C. S. any colonial produce or any and what effects and to what amount in order to provide for the payment of the said bills so delivered by you to the said complainant for the produce of the said cargo, Or whether or no have you at any time or times and when assigned or conveyed to the said defendants T. R. and C. S. or to any other person or persons and whom by name in trust for them or for their benefit any and what estates or property whatsoever in or towards satisfaction of the said bills or any of them or any part thereof, or have the said defendants T. R. and C. S. been in any other and what manner paid or satisfied by you the amount of the said bills or any and which of them or any and what part thereof, or have you in any and what manner and when had credit in account with the said defendants T. R. and C. S. for the amount of the said bills or any and which of them or any and what part thereof? Set forth &c.

*To prove that witness as the purchaser of a ship's cargo delivered bills to the plaintiff for the produce drawn upon the defendants, that he consigned colonial produce to them to provide for the payment thereof, or made over property to them, or that they have been satisfied the amount, or have given witness credit in account for the amount of the bills.*

Do you know and from what circumstances when and where the said complainant A. W. was born and baptized? If yea, Set forth the time and place of her birth and baptism and the reason of your knowledge therein, and who were her father and mother, and where they usually resided at the respective times of the birth and baptism of the said complainant, and what was their situation in life. Set forth &c.

*To prove the birth and baptism of the plaintiff.*

*To prove the boundaries of glebe lands, in whose occupation the same were at a particular time, and what was then the annual value.*

\* Do you know the lands in the pleadings of this cause mentioned called glebe lands? If yea, Where are the same situate and how are the boundaries thereof marked and described, and in whose occupation and under what term or holding were the said glebe lands on the 4th October 1801, and what was then the annual value of the said glebe lands as you know or for any and what reason believe? Declare &c.

*To prove the abutments of a garden, and whether there is any communication between the same and the adjoining premises.*

\* Are you or not acquainted with the premises in the pleadings of this cause mentioned called the detached garden? If yea, How is such detached garden fenced or surrounded and by what ground or premises is it bounded or abutted and particularly on the east side thereof, and is there or not any gate door or opening communicating with any and what premises on the east side of the said detached garden? Declare &c.

*To prove the boundaries of a parish, and how divided from the adjoining one.*

Whether or no do you know and how long have you lived in the parish of W. in the county of —, and whether or no did you at any time or times and when attend any and what public perambulations of the said parish, or are you by any and what other means acquainted with the boundaries of the said parish, and in particular with the boundary or division between the said parish and the parish of C., and how and in what manner is the said parish of W. divided from the said parish of C.? Declare &c.

*To prove the boundaries of a piece of land containing a stone quarry, and its distance from a river,*

\* Are you or not acquainted with the piece or parcel of land containing a stone quarry in the pleadings of this cause mentioned to be situate at or near certain places called or known by the names of — and — in the parish of — and near to the river A.? If yea, How long have you been acquainted therewith, and how is such piece of land bounded and at what distance is the same situated from the said river A.? Look upon the map or plan now produced and shown to you at this the time of your examination, marked with the letter (A),—What doth the same purport to be or contain, and does or not the same contain a true and correct plan of the said piece or parcel of land and quarry and of the boundaries thereof as you know or do for any and what reason believe? Declare &c.

*particularly with reference to a map or plan thereof.*

\* Do you know L. H. Chapel now or formerly situated at L. in the parish of B. in the county of L. or the scite thereof? Was the same used as a Roman Catholic Chapel or as a Protestant Chapel as you know or for any and what reason believe? Were the ceremonies of baptism marriage and burial performed in the said chapel as you know or have heard and from whom or for any and what reason believe, and were there or not any registers or register of baptisms marriages and burials made or kept in or adjoining to the said chapel? If yea, Are or is there any registers or register thereof now kept in or adjoining to the said chapel, of baptisms marriages and burials performed therein? Do you know or have you heard and from whom whether the said chapel and registers were ever and when destroyed by fire or otherwise and how and by whom? Have you heard any person or persons and whom by name make any and what declarations relative thereto, and were or was such persons or person in any and what manner connected with or in the service of or in any and what manner related to any person in the service of the family of A. in the pleadings in this cause named, and are or is such persons or person or any or either of them now living, and if dead, when did they respectively die? What is the general report or belief of the persons residing in the neighbourhood of the said chapel of L. H. or the scite thereof relative to the destruction of the said chapel and registers by fire or otherwise as you know or for any and what reason believe? Set forth according to the best of your knowledge remembrance information and belief all and every the matters inquired after by this interrogatory and the grounds thereof.

*To prove whether a chapel was used as a Roman Catholic chapel or Protestant chapel, whether baptisms, marriages, and burials were performed there, and whether the registers thereof were kept there;*

*Whether the chapel and registers were destroyed and when and how, what declarations witness has heard relative thereto and from whom;*

*Whether such persons were connected with a particular family, and whether living or dead;*

*and the general belief in the neighbourhood relative to the destruction of the chapel and registers.*

\* Are you or not acquainted with the said complainants J. T. and M. his wife? And if yea, Are you acquainted with the state of the said complainants' family? What children or child have the said complainants J. T. and M. his wife now living, and what are or is the names or name of such children or child? Set forth all you know concerning the particulars inquired after by this interrogatory and the reasons for such your knowledge? Declare &c.

*To prove what children the plaintiffs have.*

*To prove what children a plaintiff had by her late husband and their names; that certain of the plaintiffs are the surviving children, and that the widow had another son who died without issue.*

Whether or no had the said M. H. and A. his wife heretofore or late A. C. in the preceding or 7th interrogatory mentioned or inquired after any and what number of children? If yea, What were their respective names or the names of any and which of them, and particularly are or is not the said complainants R. H. &c. or some or one and which of them the children or child of the said M. H. and A. his wife, and had they or not another son named T. H. and is he living or dead? And if dead when and about what time did he die, and did he or not leave any children or child or issue and whom? Had or not the said A. H. any and what other children or child or issue other than and besides those hereinbefore named? If yea, Are they or any and which of them living or dead, and if dead when or about what times or time did they or any and which of them die as you know or do for any and what reason believe? Declare &c.

*To prove whether a particular person is living or dead;*

*that he contributed to the maintenance of a child, and frequently visited it;*

*the degree of notice or affection he showed towards it, and in what manner he expressed himself;*

*that he treated such child as his own, and that the child treated him as his father.*

\* Do you know what is become of T. H. in the preceding interrogatory named? Is he living or dead? If living, where hath he from time to time resided since the — day of —? Or if dead, when or about what time did he die and where? Did he or not for any and what period of time in any manner and how pay or contribute any and what sum or sums of money yearly or otherwise and how for or towards the maintenance or education of the child which is inquired after by the last interrogatory, and did he or not during any and what period of time ever and when or how often and where visit or see such child? Were you present at all or any and how many and which of such times? And if yea, Did he at all or any and which of such times take any and what kind of notice of such child, or show or express and how or in what particular manner any and what degree of affection for it and on what account, and how and in what manner did he at such times generally express and behave himself to or respecting such child? Set forth the particulars of such expressions or declarations and any circumstances relating thereto;—Did the said T. H. at all or any and which of such times and in the presence of any other person or persons and whom by name treat such child or speak to it



or of it as being his own child, and did such child at all or any and which of such times speak to or address the said T. H. as being its father, or as being in any and what degree or manner related to it? Declare &c.

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Whether or no do you know and for how long have you known the defendant J. P. the sister of the said testator W. G. and her family? Whether or no were there any and what children of the said defendant J. P. living at the time of the death of the said testator, and when did the said testator die, and which of such children are now living and what are their respective ages, and if any or either of them have or has died since the said testator, when did he she or they die? Declare &c.

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\* What was the true and real consideration of the said deed marked (A)? Whether or no were or was any and what sums or sum of money at or about any and what times or time paid as or for or in part of the consideration thereof, and when and where and by whom and on whose account and to whom and for whose use and on what occasion? If yea, Were you or not present at the time of paying the same or any and what part thereof? And if yea, Did or not the person whose name appears to be subscribed to the receipt indorsed on the said deed at or about the time of signing such receipt say or declare any thing and what concerning his having received or been paid or satisfied the whole or any and what part of the money therein or thereby expressed to be paid to and received by him? Declare &c.

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\* Were you at any time and when present at any and what conversation between the said complainant and defendant respecting the said defendant's purchasing of the said complainant his the said complainant's interest in the sum of £2400 in the pleadings of this cause mentioned to

*To prove what children a defendant had at the death of a testator, the time of his death, and what children are living or dead.*

*To prove the payment of the consideration-money expressed in a deed, and the acknowledgment of the person on receiving the same.*

*To prove a conversation between the plaintiff and defendant, respecting the defendant's purchasing the plaintiff's in-*

*terest in a sum of money paid into court in another cause; the agreement to purchase the same, and upon what terms.*

have been paid by him into the Court of Chancery in a certain cause entitled —? If yea, How did such conversation arise and what passed between the said defendant and complainant respecting such purchase, and did or not the said defendant agree to purchase such interest upon any and what terms, and what in particular did the said defendant say to the said complainant respecting the said complainant's chance of recovering the said £2400? Declare &c.

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*To prove conversations respecting the renewal of a lease, and also the agreement by defendant to apply for a renewal.*

\*Have you at any time or times and when or how often had any and what conversation or conversations with the said defendant respecting the renewal of the lease granted by the said Dean and Chapter in the pleadings of this cause mentioned? If yea, How did such conversation or conversations arise, and what passed between you and the said defendant respecting the obtaining of such renewal, and did or not the said defendant agree to apply for or make any and what declarations relative to the making of any and what applications for the renewal of such lease, and what in particular did the said defendant say to you respecting such renewal, and was any other person and who by name present at the time of such conversation or conversations or any and either and which of them? Declare &c.

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*To prove the particulars of a conversation and an offer made by the plaintiff to one of the defendants.*

[This was one of a set of interrogatories on the part of the plaintiff to prove an agreement for purchase of a public-house.]

Whether or no were you at any time in the year — and when and where present with the said complainant and the said defendant J. D. when any conversation passed between them respecting the public-house called the — at E., in the occupation of the said complainant, and any agreement relating thereto? If yea, Set forth the particulars of such conversation and what was said therein by the said parties respectively, and whether the said complainant then offered to pay any and what sum of money to the said defendant J. D.; Set forth &c.

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\* Did you know F. A. deceased in the pleadings of this cause named the uncle of the said complainant, and did you know H. I. of ——— deceased or either and which of them in their or his life-time, and how long did you know them as you did know, and how and in what manner and for what length of time previously to their deaths respectively did you so know or become acquainted with them respectively? Did you at any time or times and when in particular hear the said F. A. enter into any conversation or conversations with or make any declaration or declarations to the said H. I. or any other person or persons and whom by name and when in particular and in whose presence relative to his family and relations, or any estate or estates to which he the said F. A. considered himself entitled? And did you at any time or times and when hear the said H. I. make any and what declaration or declarations relative to his being present at the time that any and what agreement was entered into by the said F. A. with any person or persons and whom by name, relative to any and what estate or estates, or to any and what monies that the said F. A. was to receive annually from any person or persons and whom by name, and the consideration thereof? And did you at any time and when, hear the said F. A. read any and what deed or deeds, agreement or agreements between him and any and what person or persons relative to any and what estate or estates? And do you know whether any deed or deeds parchment or paper-writings belonging to the said F. A. was or were at any time or times and when, destroyed by fire or otherwise and how? And did you at any time and when see any and what deeds or deed that were or was at any time and when in possession of the said F. A. that had any and whose seals affixed thereto, or had the names or name of any persons or person and whom signed thereto? If yea, Set forth all and every the particulars inquired after by this interrogatory, or such of them as you do know, and the particulars thereof and of every part thereof. Declare &c.

*To prove a knowledge of certain persons deceased, and how and for what length of time witness was acquainted with them;*

*To prove conversations between them, or declarations made by one of them relative to his family and relations, or property to which he considered himself entitled;*

*To prove declarations by the other, that he was present at the time an agreement was entered into relative to certain property;*

*To prove that witness heard the agreement read;*

*To prove the destruction of certain papers by fire;*

*and that witness saw certain deeds in the possession of one of the deceased persons, having the names and seals of certain persons thereto.*

Interrogatories to be exhibited &c. [see p. 148, *antea*,] wherein W. R. and J. P. assignees of the estate and effects of E. T. a bankrupt, are complainants, and T. H. is defendant, on the part and behalf of the said complainants.

*To prove the first conversations with the defendant respecting a bankrupt's affairs;*

*What agreement was made respecting the assignment of part of the bankrupt's property, or what passed relative thereto;*

*That the defendant was informed that the bankrupt was in insolvent circumstances, and what passed relative to a composition with his creditors, and as to the defendant's guaranteeing the same.*

*To prove subsequent conversations with the defendant respecting the bankrupt's affairs;*

*What agreement was made, or what passed as to the assignment of part of the bankrupt's property, and as to the insolvency of the bankrupt, or a composition with his creditors, and as to the defendant's guaranteeing the same.*

1st. [*As to knowledge of the parties, vide antea, p. 152.*]

2d. Had you at any time and when first and where and in whose presence any conversation with the defendant respecting the affairs of E. T. the bankrupt in the pleadings of this cause named? If yea, Set forth upon what occasion such conversation took place and the particulars of such conversation, and what was said thereon by the said defendant or by you or any other person or persons to or in the presence or hearing of the said defendant respecting the affairs of the said E. T., and was any and what agreement then come to by you on the part of the said E. T. with the said defendant respecting the assignment of any and what leases, or was any thing and what then said by the said defendant or by you or any other person and whom to the said defendant or in his hearing respecting any such assignment? And did you then inform the said defendant that the said E. T. was in insolvent circumstances, or did any thing and what pass as to the insolvency of the said E. T. or as to any and what composition being made or proposed to his creditors, or as to the said defendant's guaranteeing such composition? Set forth &c.

3d. Had you at any other time or times and when afterwards before the commission of bankrupt was taken out against the said E. T. any other conversation or conversations with the said defendant respecting the affairs of the said E. T. and where and in whose presence and upon what occasions respecting such affairs? If yea, Set forth the particulars of such conversation or conversations in the order in which the same took place, and what was said thereon respectively by you or the said defendant or any other person or persons and whom in his presence or hearing; And was any and what agreement come to, or any thing and what said in any and which of such conversations, as to the assignment of any and what leases by the said E. T. to the said defendant, and did any thing and what pass in any and which of such conversations as to the in-

solvency of the said E. T. or as to any and what composition being made or proposed to his creditors, or as to the said defendant guaranteeing such composition? Set forth &c.

4th. When did you first inform the said defendant of or did you or not learn from him that he knew or suspected the insolvency of the said E. T., and when first did any thing and what pass between you and the said defendant or any other person and the said defendant in your presence and hearing respecting a composition to be made and proposed to the creditors of the said E. T., and when first did the said defendant agree to guarantee such composition? Set forth &c.

Lastly. [*The last general interrogatory, vide antea, p. 153.*]

[These interrogatories were exhibited to the clerk of the bankrupt, who had discovered his insolvency and informed the defendant of it.]

\* Were you or not employed by the said J. R. deceased as his attorney or solicitor in the purchase or in completing the purchase of the said reversionary estate and interest of the said bankrupt, and in preparing the necessary conveyances and assurances thereof? If yea, Did you lay the abstract of the title thereto before or employ any counsel and whom by name on behalf of the said J. R. or on whose behalf to prepare the necessary conveyance or conveyances of the said reversionary estate and interest of the said bankrupt, and to whom by name? And did or not the said J. R. inform you of his intentions in making such purchase, and did or not the counsel so employed by you prepare the necessary drafts of such conveyances according to the directions and instructions of the said J. R.? If yea, Set forth the declarations made by the said J. R. to you relative to and expressive of his intentions in making such purchase, and how and in what manner and for what purpose such conveyances were prepared by such counsel as you know or do for any and what reason believe; Declare &c.

\* Did or not the said J. R. at any time and when alter his intentions with regard to the draft conveyances inquired after by the preceding interrogatory, and did or not the said J. R. give directions to you or to any other person or per-

*To prove when the defendant was first informed of the insolvency of the bankrupt, and when first any thing passed respecting a composition with his creditors, and when first the defendant agreed to guarantee the same.*

*To prove that witness was employed by a deceased person as his attorney in the purchase of a bankrupt's reversionary estate; that witness laid the abstracts before counsel with instructions to prepare the conveyances, and the intentions of the deceased in making the purchase;*

*That counsel prepared the drafts of the conveyances, and the declarations of the deceased relative to such purchase, and the conveyances which were prepared.*

*To prove that he altered his intentions with regard to the conveyances, the directions which he gave*

*as to the alterations to be made, and his intentions relative thereto.*

*To prove that certain deeds of conveyance were prepared, and by whom;*

*That Sir T. B. was a party, and executed the same, and the circumstances attending such execution;*

*To prove whether drafts thereof were previously prepared;*

*Whether the same were submitted to Sir T. B. for his perusal;*

*Whether he perused or approved of the same, or made any alterations or corrections therein;*

*Whether the engrossments were prepared from such drafts;*

*Whether any attorney was present on his part, and whether such attorney read over the engrossments, and whether the same were read over to Sir T. B. before he executed the same, and whether the deeds or a counterpart were left with him or his steward.*

sons and whom by name to make any and what alterations and insertions in the said draft conveyances, and what was the intention expressed by the said J. R. in making such alterations as you know or do for any and what reason believe? Declare &c.

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\* Do you know or can you set forth whether any deed or deeds of grant or conveyance was or were made for the purpose of carrying the agreement in the last preceding interrogatory mentioned into execution? If yea, By whom was or were such deed or deeds prepared? Was or not Sir T. B. in the pleadings in this cause named a party to such deed or deeds? If yea, Whether or not did he execute such deed or deeds or any of them? If yea, then set forth when and upon what occasion and at what place and in whose presence the said Sir T. B. executed the same; Whether or not were or was any drafts or draft made from which such deed or deeds was or were prepared and engrossed? If yea, Whether or not was or were such draft or drafts, or any and which of them at any time submitted to the said Sir T. B. for his perusal, or to any person on his behalf? If yea, Whether or not did the said Sir T. B. or any person on his behalf peruse such draft or drafts or any and which of them? Whether or not did the said Sir T. B. or any person on his behalf approve of such draft or drafts, or make any and what corrections amendments or alterations therein? Whether or not was or were the engrossment or engrossments of such deed or deeds so executed by the said Sir T. B. prepared or copied from such draft or drafts? Whether or not was any attorney or other professional person present at the execution of the said deed or deeds on behalf of the said Sir T. B.? If yea, Whether or not did such attorney or professional person peruse or read over such engrossments or engrossment? Whether or not were or was the same read, and by whom, to the said Sir T. B. before he executed them? Whether or not were or was such deeds or deed or any counterpart thereof then or at any time and when left in the possession of the said Sir T. B. or of his stewards or agents? Declare &c.

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\* Whether or no did you at any time or times and when and on whose behalf correspond by letters or otherwise and how with the said defendant T. H., or did you or not at any time or times and how or in what manner and by what means receive any letter or letters from him with respect to — ? And if yea, Have you such letters or any and which of them in your possession custody or power, or what is become of the same respectively? If you are able, produce such letters, and declare how or in what manner and by what means the same respectively came into your possession, and of whose hand-writing all such letters respectively are, and were or was or not the same or any or either and which of them ever and when and by whom and on what occasion produced or shown to the said defendant? If yea, In whose hand-writing did he declare or admit the same respectively or any and which of them to be, and what is the purport or effect of such letters respectively? Declare &c.

*To prove a correspondence with, or the receipt of letters from the defendant;*

*also to prove the hand-writing thereof, and how the same came into the witness's possession; and in whose hand-writing the defendant admitted the letters to be upon the same being shown to him.*

Whether or no were you on or about the — day of — and for how long before employed as clerk or bookkeeper in any and what trade or business carried on by the said defendant S. F. in co-partnership with his said brother A. F. or any other person or persons and whom and at what place? If yea, Whether or no had you any and what opportunity to know, and did you or not know the circumstances and state of credit of the said trade or business, and of the said S. F. and of the other person or persons interested therein, and what were the circumstances and state of credit of the said S. F. and of the said other person or persons on or about the said — day of —, and for some and what time before? Whether or no as you do for any and what reason know or believe, were the said defendants or any or either and which of them in any and what manner acquainted on or about the said — day of — with the circumstances and state of credit of the said S. F. and of his said co-partner or co-partners; and whether or no did the said defendants or any and which of them at any time and when on or about the said — day of — refuse payment of any draft for a sum of

*To prove by a clerk, the circumstances and state of credit of the business of a partnership firm, and of the partners, and that the defendants were acquainted therewith, and had refused payment of a draft drawn upon them by the firm.*

£— or any other and what sum of money drawn on them or some and which of them by the said S. F. and his said co-partner or co-partners or any and which of them, and for what reason and under what circumstances did they refuse such payment? State the particulars of the several matters hereinbefore inquired into, fully and at large, and the truth declare &c.

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*Interrogatories relating to the customs of different manors.*

1. *To prove the customs of two manors with respect to the passing and surrendering of customary lands,*

*and in whom is the freehold thereof;*

*and whether the customary lands descend to the customary heir.*

2. *To whom the timber on the customary lands belongs.*

\* Do you know the manors of T. and F. in the county of S. or either and which of them, and how long have you so known them or either and which of them respectively? Are you acquainted with the customs of the said manors respectively or either and which of them, and by what means did you become acquainted therewith? What are the customs of the said manors respectively with regard to the tenure and descent of the customary lands and tenements holden of the said manors respectively or either and which of them, and particularly what are the customs of the said manors respectively with respect to the passing and surrendering of customary lands and tenements holden of the said manors respectively or either and which of them? Is the freehold of the customary lands and tenements holden of the said manors respectively or either and which of them in the tenants of such customary lands and tenements respectively, or in the lords of such manors respectively or either and which of them, or what is the nature of the tenure of the customary lands and tenements holden of the said manors respectively? Are such customary lands and tenements holden at the will of the lords of the said manors respectively or either and which of them or not, and are the same lands and tenements of inheritance or do they or not descend to the customary heir of the tenant thereof? Declare &c.

\* To whom does the timber on the customary lands and tenements within the said manors belong, or who have usually felled or cut the same? Declare &c.



\* In what manner do the customary lands and tenements within the said manors respectively or either and which of them pass, and particularly do the same pass by surrender to the lord or any other and what means, and are the same deviseable by will or not, and if not, in what manner do the owners of customary lands and tenements within the said manors respectively dispose of the same, and so as to make the same subject to any testamentary disposition? Declare &c.

\* Do the owners of customary lands and tenements within the said manors respectively or either and which of them usually make any and what surrenders or surrender to trustees or trustee to perform the wills of such owners? If yea, What is the nature of such surrenders and by what name are the same usually called or known? What is the effect of any such surrender in case no disposition is made by will of the owner of the lands or tenements comprised therein or only a partial disposition thereof, and is there any difference between a total and a partial disposition by will operating upon any such surrender? Declare &c.

\* Do you know any instance where a partial disposition has been made by will of any owner of any customary lands or tenements within either and which of such manors, and where the persons or person to whom any surrender has been made to perform such will have or has enjoyed the same lands or tenements under such surrender so far as the same have not been disposed of by such will? If yea, Name the person or persons who has or have enjoyed such lands under any such surrender, and the extent of estate which has been so enjoyed; Declare &c.

\* Do you know any instance where a partial disposition has been made by will of any owner of any customary lands or tenements within either or which of such manors, and where the customary heir of such owner has claimed and enjoyed so much of the estate as has not been disposed of by such will against the persons or person to whom such lands or tenements have been surrendered to perform the will of such owner? If yea, Name the persons or person who have or has claimed or enjoyed as such customary heirs or customary heir and the extent of estate which has been so enjoyed; Have you searched the court rolls of the said manor for instances of such enjoyment by such cus-

3. *How the customary lands pass, whether by surrender, and whether deviseable by will.*

4. *Whether it is customary to make surrenders to trustees to perform the trusts of wills, the nature thereof and how called; and the effect of such surrender in case no disposition or only a partial disposition is made by will.*

5. *To prove an instance of a partial disposition by will, and where the surrenderee has enjoyed the lands not so disposed of.*

6. *To prove an instance of a partial disposition by will, and where the owner's heir has claimed and enjoyed as against the surrenderee the estate not so disposed of,*

*and whether witness has searched the court*

rolls for any such instances.

7. To prove the mode of barring intails within the manors.

8. To prove to what heirs the customary lands descend, and where a woman, a customary tenant, has no issue.

9. To prove what brothers a woman had, and who were the eldest and youngest;

what issue the latter had, and who was the youngest,

and who was her heir according to the customs of the manors.

To prove the custom of a manor with regard to the lineal and collateral descent of copyhold lands where a tenant dies intestate.

To prove the customs of a manor with regard to the tenure and descent of customary lands, and as respecting the lineal and collateral heirs of a tenant dying intestate.

tomary heirs or heir? If yea, What have been found in such court rolls concerning the same? Declare &c.

\* How are intails of customary lands or tenements within the said manors respectively or either and which of them usually barred or destroyed, and particularly whether by recovery suffered within the manor or by surrender or by any other and what means? Declare &c.

\* To what heirs do customary lands or tenements within the said manors respectively descend according to the customs of such manors respectively, and particularly where a woman who is a customary tenant of the said manors respectively has no issue, to whom do her customary lands descend according to the customs of such manors respectively? Declare &c.

\* Do you know the family and relations of J. P. in the said interrogatory mentioned? If yea, Had the said J. P. any issue living at her death? What brothers had the said J. P., and were or was such brothers or any and which of them living at her death, and which was the eldest and which was the youngest of such brothers respectively, and what issue had the youngest of such brothers, and which was the youngest of such issue living at the death of the said J. P.? Who was the heir of the said J. P. according to the customs of the said manors respectively of her customary lands and tenements within such manors respectively at the time of her death? Declare &c.

\* Do you know the manor of — in the county of — and how long have you known it? Are you acquainted with the customs of the said manor and by what means did you become acquainted therewith? What is the custom of the said manor with regard to the lineal and collateral descent of copyhold or customary lands and tenements holden of the said manor where the tenant dies intestate? Declare &c.

\* Do you know the manor of S. in the county of Y. and how long have you so known it? Are you acquainted with the customs of the said manor and by what means did you become acquainted therewith? What are the customs of the said manor with regard to the tenure and descent of the customary lands and tenements holden of the said manor, and particularly is there any difference in the customs of the said manor as to the admission of lineal and collateral

heirs of a tenant who dies seised or possessed of lands within the said manor? If yea, What are the customs of the said manor in the admittance of children or other lineal heirs or brethren of a tenant so dying seised of copyhold lands holden of the said manor? And what are the customs of the said manor in the admittance of nephews or other collateral heirs of a tenant so dying seised of copyhold lands held of the said manor? Declare &c.

Whether or no are you by any and what means acquainted with the customs of the manor of M. in the county of H.? Whether or no in cases where copyholds are holden of the said manor for lives have the tenants a customary right to exchange any life or lives or to add any life or lives in the place of those which drop, upon a payment of a fine to the lord? And whether or no did it ever and when first happen that the lord or steward of the said manor refused to add or exchange any life upon the application of any such tenant upon the ground that the said copyholders of the said manor had no such right to add or exchange lives? And whether or no upon any copyhold lands so holden for lives of the said manor having fallen into the hands of the lord by the death of any customary tenant, has the heir of such tenant a customary right upon payment of a fine to the lord to have the same lands re-granted to him for the life of such heir or one or two other persons or how otherwise; and whether or no did it ever and when first happen that the lord or steward of the said manor has refused to make such re-grant upon the application of any such heir upon the ground that such heir had no such right? Declare &c.

Whether or no had you at any time and when any conversation with W. R. the late lord of the said manor of M. respecting the fines payable on the renewals of copyhold estates holden for lives within the said manor? If yea, Set forth the particulars of such conversation, and when and upon what occasion the same passed; Declare &c.

*To prove that the tenants of copyhold lands held for lives had a right of renewal, or of substituting new lives on payment of a fine, and whether the lord or his steward ever refused such right.*

*Also to prove that when such lands have fallen into the lord's hands by death, the heir had a right to have the same re-granted to him on payment of a fine, and whether the lord or his steward ever refused to make such re-grant.*

*[The fine having been of late years arbitrary, this interrogatory is framed so as not to call upon the witnesses to speak as to the amount of the fine.]*

*To prove a declaration by the late lord of the manor that formerly the fine on renewals was certain.*

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\* Are you acquainted with the custom or manner of granting leases of premises held under the Ecclesiastical Corporation of the Dean and Chapter of Westminster, and

*To prove the custom of granting leases and renewals of leases held under an ecclesiasti-*

*cal corporation, and the fines payable thereon, and whether renewals are ever refused.*

of granting renewals of such leases? If yea, For how long have you known the same and by what means did you become acquainted therewith? What is the custom of the said Dean and Chapter with regard to the renewals of leases granted by them, and how often are such renewals made, and upon what terms and at whose request and what fines are payable thereon, and are the renewals of leases ever refused by the said Dean and Chapter and for what reason? Declare &c.

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*To prove the custom of a manor with regard to a widow's right to free-bench, upon a grant by copy of lands for lives, and what witness has heard as to such custom from deceased persons.*

Have you for any time and how long known the manor of K. in the county of S. in the pleadings in this cause mentioned? What as you know and for any and what reason believe is the custom of the said manor as to the rights of a widow or widows upon a grant by copy of lands within the said manor for three lives, and whether or no have you ever heard any thing and what as to such custom from any person or persons and whom, who are now dead? Set forth &c.

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*To prove a custom in a manor that a widow is entitled to her free bench in estates held for lives.*

\* Whether or no have you for any and how long time been by any and what means acquainted with the manor of B. in the county of S., and have you or not been for any and how long time by any and what means acquainted with the customs of the said manor or any of such customs? Are there or not any estates or tenements within such manor which are held of it by copy of court-roll, or under any and what other tenure or in any and what other manner, for three lives or any number of lives successively or otherwise and how? If yea, Is there or not, and hath there or not been from time immemorial or for any and how long time, any custom in such manor under and by virtue of which the widow of the person being possessed of or having any and what estate or interest in any estate or tenement held of or under such manor at the time of his death, is entitled to such estate or tenement or any and what parts thereof for any and what estate term or interest or to any such or the like effect? If yea, Set forth the particulars of such custom fully and at large; Declare &c.

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\* Did you or not know J. S. in the pleadings of this cause named? If yea, Is he living or dead, and if dead, where and when did he die, and did you or not see him after he was dead, and where was he buried, and did you or not attend at his funeral or how do you know that he is dead? Declare &c.

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*To prove the death of a party and his burial.*

\* Did you know the leasehold estate called W. in the particulars of the estate in the pleadings of this cause mentioned? And if yea, Did you know —? And if yea, Was the said — living or dead on the 4th October 1821, and if dead, when did he die, and how do you know that the said — is dead? And was or not the said — one of the lives named in the lease of the said estate called W. as you know or for any and what reason believe? Declare &c.

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*To prove the death of a nominee in a lease held for lives.*

Did you know A. B. and C. D.? If yea, Do you know whether they or either and which of them be now living or dead? And if they are dead, when did they respectively die, and how do you know that they are both or either of them is dead? Declare particularly your reasons for knowing or believing that the said A. B. and C. D. are or that either and which of them is dead; And are you acquainted with the character or manner of hand-writing of the said A. B. and C. D. or either and which of them? If yea, Look on the exhibit marked with the letter (A) and now produced and shown to you at this the time of your examination, and at the names of A. B. and C. D. indorsed thereon as witnesses to the sealing and delivering thereof, and declare whether the same be of the respective proper hand-writing of the said A. B. and C. D. as you know or for any and what reason believe; Declare &c.

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*To prove the death of subscribing witnesses, and their hand-writing.*

\* Did you or not know J. G. late of —, a witness examined *de bene esse* in this cause? If yea, Do you know whether he is living or dead, and if dead, when did he die, and how did you become acquainted with his death? Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter

*To prove the death of a witness examined de bene esse, and a copy of the register of his burial.*

(A) and purporting to be a copy of the register of the burials of——? Did you at any time and when carefully examine the same with the entry made in the register book of or kept for any and what parish or place, and is the same a true copy thereof as you know or for any and what reason believe? Declare &c.

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*To prove the debt due to the plaintiffs.*

Whether or no was the testator W. O. in the pleadings in this cause named at the time of his death indebted to the said complainants or either and which of them in any and what sum or sums of money, and when and by what means and on what account did the said testator become so indebted? Declare &c.

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*To prove that a deceased person was indebted to the defendant;*

\* Was or not the said S. D. in his life-time indebted unto the said defendant C. L. in any sum or sums of money as you know or do for any and what reason believe? If yea, In what sum or sums of money and for what or on what account or accounts and to what amount was the said S. D. so indebted unto the said defendant C. L.? Whether or no did the said defendant C. L. by himself or by any other person or persons and whom in the life-time of the said S. D., apply to or request the said S. D. to pay or satisfy him the said defendant C. L. such debt or debts or any or either or which of them or any and what parts or part thereof, or make any other and what application to the said S. D. touching or concerning the said debt or debts or any or either and which of them or any and what parts or part thereof? If yea, When or about what time or times and where and in what manner was or were such application or applications or request or requests made, and what did the said S. D. do say or declare then or on that occasion? Whether or no did the said S. D. in his life-time and when or about what time or times and where and upon what occasion or occasions say confess acknowledge or declare unto you or unto any other person or persons and whom in your presence or hearing, any thing and what touching or concerning such debt or debts or any or either and which of them or any and what part or parts thereof? And did you or did you not at any time or times and when by the order or direction or at the desire and request of the said S. D.

*applications made to him for payment,*

*the deceased's acknowledgments of the debt;*

or of any other person or persons and whom write or send any and what letter or letters or any other and what writing or writings and of what contents purport or effect to the said defendant C. L. touching or concerning the said debt or debts or any or either and which of them or any and what parts or part thereof? Whether or no did the said S. D. at any time or times in his life-time and when where and in what manner and upon what occasion or occasions and to whom and in whose presence and hearing, admit confess or acknowledge or promise to pay the said debt or debts or any or either and which of them or any and what parts or part thereof? And did or not the said S. D. at any time or times and when in his life-time pay or in any and what manner satisfy the said defendant C. L. the said debt or debts or any or either and which of them or any and what parts or part thereof? Declare &c.

*that witness wrote several letters to the defendant by the deceased's direction respecting the debt;*

*that the deceased promised to pay the same;*

*and whether the debt was ever paid.*

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[To prove the execution of deeds; see p. 203, 4, *postea*.]

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\* Have you now or have you not lately and when last had in your custody possession or power certain deeds papers writings and documents in some and what chest or otherwise of or relating to the estates and family of A. in the pleadings in this cause named, or of some and which of them? If yea, How did the same come into you custody or power, and from whom and when did you receive or possess the same and each and every of them, and how did the same come into the custody possession or power of the person or persons from whom you received or possessed the same as you know or have heard, or for any and what reason believe? Declare &c.

*To prove that witness had certain deeds in his possession, from whom he received the same, and how the same came into the possession of the persons from whom he received the same.*

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Look upon the deeds papers or writings produced &c. What do the same respectively purport to be? Were or was the same or any or either and which of them at or about any and what time or times found and by whom and on what occasion in the custody of any and what persons or person amongst any deeds or writings relating to any and what and whose estate? Where and in whose custody

*To prove the finding of old deeds, and in whose custody the same have been.*

have or hath the same or any or either and which of them been from time to time and for any and how long time kept, and whether or not amongst the deeds or writings relating to any and what estate, or how otherwise? Declare &c.

*To prove by whom certain deeds were brought to a person to be executed; whether the same were read over to him or on his behalf;*

*Whether witness was requested by the person who brought over the deeds to peruse and examine the same on behalf of the person by whom they were to be executed;*

*Whether any memorandum of agreement or draft accompanied the deeds, and what was the understanding at the time of execution with regard to the premises comprised therein.*

*To prove what the person who brought the deeds to be ex-*

\* By whom were the said indentures brought over to B. to be executed, and upon what day in particular, and whether or no upon occasion of the same being so brought over and prior to the execution thereof were the same or any and what parts thereof in particular read over to the said Sir T. B. by you or by any person and whom by name on his behalf for their or his approbation, or were the same or any and what part thereof in particular read over by any person and whom by name, in or out of the presence of the said Sir T. B.? And if yea, By whose directions and requests did such person so read and inspect the same, and what parts and for what purpose and with what view in particular, and where was the said Sir T. B. when such person so inspected the same or any and what part thereof; and in particular were you or was any other person and who by name upon the occasion aforesaid requested by the said person or persons who brought over the said indentures to B. or either and which of them to peruse and examine the same on behalf of the said Sir T. B. and to approve thereof for him, and to see that the same was properly and fairly drawn up; and whether or no was the aforesaid memorandum of agreement or any draft of the said release produced on the occasion aforesaid, or was the same or any and what part thereof comprised with the said release, and whether or no, as you do know or have any and what reason for believing, was it understood or believed by you and the other persons in the employment or service of the said Sir T. B. who were present, and by the said Sir T. B. when he executed the said release, that the said coal comprised therein was the same only as was comprised in the said memorandum of agreement, or was it understood and known or believed by the said Sir T. B. or by you and such other persons or either and which of you that the said release did comprise more than such last-mentioned coal and what other coal? Set forth &c.

\* Whether or no did the persons who brought over the said indentures to be executed as aforesaid or either and which of them then inform or intimate to you or to any



other person present on behalf of the said Sir T. B. that the said release had been prepared by them or by either and which of them according to the directions of the said Sir T. B. or with his knowledge or consent, or intimate or say any thing upon the aforesaid occasion which had the effect of inducing you or such other persons present on behalf of the said Sir T. B. to suppose that the said release was properly prepared and according to the directions and instructions received from him, or that he was acquainted with the terms and conditions thereof, or intimate or say any thing which had the effect of making you inspect or examine the same less minutely and attentively than you would otherwise have done, or which tended thereto? And if yea, What was the nature and purport of such intimation, and what fell from such persons and from either and which of them so far as you recollect the same, and how long did such person remain at B. after the same release was executed? Set forth &c.

\* Whether or no did you upon occasion of the same release being brought to B. for execution examine or read over the whole thereof? And if nay, What were the reasons which prevented you from so doing or which made you think it unnecessary so to do? Set forth &c.

\* Whether or no did the persons who brought over the said release to be executed as aforesaid propose or invite any inspection or examination thereof? Set forth &c.

\* Whether or no was there upon the occasion last mentioned any appearance of eagerness and anxiety on the part of the persons in the preceding interrogatory referred to or either and which of them that the said indentures of lease and release should be forthwith executed by the said Sir T. B.? And if yea, Did either and which of them express such eagerness and anxiety to you or to any other person in your presence, and what reason did they or either and which of them assign for such eagerness and anxiety shown? And whether or no did such eagerness or anxiety on their part escape your attention and observance at the time when the same was shown, and did you then draw any conclusion or inference therefrom? And if yea, What conclusion and inference did you then draw, or did you draw any and what inference therefrom at any subsequent

*executed said, which had the effect of inducing the witness to believe that the release had been prepared according to the instructions given and to be less careful in examining the same.*

*To prove why witness thought it unnecessary to examine the indenture of release.*

*To prove whether the person who brought the release to be examined proposed an examination thereof.*

*To prove that the person who brought the deeds to be executed showed great anxiety to have them executed;*

*that such anxiety did not escape the witness's observation, and what inference he afterwards drew therefrom, and when for the first time.*

time, and when did such eagerness and anxiety if any for the first time appear state, and when did you for the first time draw any and what conclusion or inference therefrom, and why did you not draw any such inference therefrom at the time when the same was shown? Set forth &c.

*To prove what steps witness took upon discovering the indenture of release to be objectionable to have the same altered, and the parcels made conformable to the description contained in the previous agreement.*

\* Whether or no upon discovering the said grant to be objectionable did you take any and what steps for the purpose of altering the same, and in what particular or particulars did you endeavour to have the same altered, and state all such particulars, and whether or no did you ever and when endeavour to have any alteration made in the description of the parcels of land in the said release contained with the view of conforming the same with the description of the parcels contained in the said memorandum of agreement or with any other and what view, and if not why not? Set forth &c.

*To prove that witness examined the agreement and release; and when he first discovered that the description of the lands comprised in the release differed from the agreement, or by whom he was informed thereof, and when such discovery was first made, and the occasion thereof.*

\* Whether or no did you ever compare the said memorandum of agreement and release as to the description of the coal comprised therein respectively and of the lands comprised therein respectively and of the lands under which the same coal did lie, and did you or not discover, or were you or not informed that the said memorandum of agreement and release differed in any and what particulars, and when did you for the first time discover that the said memorandum of agreement and release do differ therein, or by whom were you informed thereof, and what was the occasion of such variation being discovered so far as you do for any and what reason know or believe, and by whom by name was such variation first discovered? Set forth &c.

*To prove that promises were held out that the indenture of release should be corrected.*

\* Whether or no while you acted in the said land agency were any promises made or expectations held out to you by the grantees named in the said release or by any and which of them that the same should be corrected and in any and what particular, and when and in the presence of whom by name and upon what occasion were such promises made or expectations held out, and in what manner were the same made and held out respectively? Set forth &c.

*To prove that witness after the release was executed by Sir T. B. informed him of various objections which*

\* Whether or no did you at any time after the release was executed and when inform the said Sir T. B. that you objected to the terms and stipulations thereof or to any and which of them in particular, and whether or no did the

said Sir T. B. ever and when in particular express to you or to any other person as you do know or believe by name any disapprobation of the manner and terms in and upon which the said release had been drawn up? And if yea, What was the extent of such disapprobation, and to which of the terms and stipulations of the said release was such disapprobation in particular and exclusively directed? And whether or no as you do for any and what reason know or believe would the said Sir T. B. have continued to acquiesce in the said release, and especially would he have acquiesced in any claim on the part of the said L. M. C. to the said farm in the year 1789 occupied by J. K. if any claim thereto had been made or declared in his life-time or if he had conceived that any such claim would thereafter be made? And would he as you do for any and what reason know or believe have endeavoured to set aside or alter the said release by any and what proceedings in any and what particulars if he had become aware of the terms and conditions thereof, and especially if he had become aware that more coal was comprised therein than in the said memorandum of agreement? Set forth &c.

\* How came you to be present at B. at the time when the before-mentioned indentures of lease and release were executed, and for what purpose were you there, and whether or no for such purpose exclusively or for any and what other purposes? Set forth &c.

\* Was there or not any dispute or difference between the said complainant and defendant relative to the said complainant's paying the sum of £—— or any other and what sum or sums of money to R. T. in the pleadings in this cause named? If yea, When or about what time did such dispute or difference arise or take place, and what was the particular nature thereof? Declare &c.

\* Did or not the said complainant and defendant ever and when agree to refer such dispute or difference to the arbitration or determination of any person or persons and whom by name? And if yea, Did or not such person or persons undertake such reference and fully and fairly hear the said complainant and defendant touching such dispute or difference? If so, When and where did such arbitrator or ar-

*he had discovered to the terms thereof; that Sir T. B. expressed his disapprobation of the terms in which the deed was drawn up; and that he would never have acquiesced to any claim on the part of the grantees to a particular farm if such claim had been made in his life-time; but that he would have taken proceedings to have had the deed rectified if he had been aware that more coal was comprised therein than in the previous agreement.*

*To prove under what circumstances witness happened to be present at the time of the execution of certain deeds.*

*To prove a dispute having arisen between the plaintiff and defendant with regard to the payment of a certain sum of money;*

*To prove an agreement to refer such dispute to arbitration; the decision made by the arbitrator, and the defendant's acquiescence therein.*

bitrators hear the said complainant and defendant, and did or not such arbitrator or arbitrators make any and what award or decision or give any and what opinion touching the matters so referred to him or them? And was or not the said defendant ever and when and where and by whom and how or in what manner informed or made acquainted with such award decision or opinion, and did he or not then or at any other time or times and when make any and what declarations respecting the same, and did he or not appear to be satisfied therewith? Declare &c.

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*To prove the receipt of dividends upon a sum of stock by the plaintiff.*

\* Do you or not know, and if yea, how and by what means, whether the said complainant H. S. ever and when and of whom and in what manner received any and what sum or sums of money and to what amount for or in respect or on account of the dividends due upon the sum of £700. 3 per cent. consolidated bank annuities in the pleadings of this cause mentioned, and in particular do you know whether she received such dividends or any part thereof and from whom subsequently to the — day of —? Declare &c.

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#### EXHIBITS.

*To prove as exhibits the abstracts of title received by the witness as solicitor for the defendant.*

\* Were you or not at any time and when during what space of time in particular employed by the said defendant J. G. in the pleadings in this cause named, as his attorney or solicitor? If yea, Look upon the exhibits now produced and shown to you at this the time of your examination marked respectively (A) and (B), the one marked (A) indorsed as purporting to be an 'abstract of the title of E. F. M.' &c. and the one marked (B), indorsed as purporting to be a 'further abstract of the title of E. F. M.' &c.; Did you at any time or times and when in particular as the solicitor or attorney of the said J. G. receive the said exhibits respectively or either and which of them from any person or persons and whom by name, either on their or his own behalf or on the behalf of any and what other person or persons? And are the said exhibits respectively in the same state and condition in which they respectively were at the time you received the same from such person or persons or how otherwise? Declare &c.

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*Interrogatories for examination of an accountant relative to an account made out by him of the dealings between deceased persons.*

*Outline of the plaintiff's case.*

G. G. the husband of the plaintiff was agent to D. defendant's husband in L., and as D. made remittances to G. who paid money for D. in the capacity of agent, an account was opened between them; G. died. The person to whom these interrogatories were administered was employed after G.'s death to settle the accounts between him and D., afterwards D. died. The plaintiff brought her bill praying an account, and alleging that a sum of money remained due to her from the estate of D.

1st. [*As to knowledge of the parties; see p. 152, antea.*]

2d. Were you or not ever and when employed by any and what person or persons and whom by name, to make out any account of the dealings and transactions between the said G. G. and T. D. in their respective life-times? And if yea, When did you receive from the said complainant any books papers or writings for such purpose, and particularly whether or not any and what books or book which were or was or appeared to have been kept by or for the said G. G. in his life-time for the purpose of making entries of any and what kind relating to dealings between him and the said T. D.? Look upon the books now produced &c. Were or was the same or either and which of them ever and when delivered unto you by or on behalf of the said complainant for such purpose or on such occasion or for what other purpose or on what other occasion, and what do the same respectively purport to be? Declare &c.

3d. Did you or not ever and when or about what time in any and what manner apply to the said T. D. to deliver or send up to you or furnish you with any books or book of account papers or paper matters or things for or towards enabling you to make out or assisting you to make out the account of dealings and transactions between the said G. G. and T. D., and did or not the said T. D. ever and when or in what manner deliver or send unto you any and what books or book of account papers or writings for such purpose or

*To prove that witness was employed to make out the accounts;*

*also to prove as exhibits the books delivered to him on the part of the plaintiff, which had been kept by her deceased husband.*

*To prove applications made to the defendant's late husband for his books of account; also prove the same as exhibits.*

## EXHIBITS.

*To prove as an exhibit the account made out by witness, or a copy thereof, and whether the same is true or false.*

in consequence of such application? Look on the books papers and writings &c. Were or was the same or any or either and which of them delivered or sent unto you by the said T. D. on such occasion or for such purpose, and what do the same produced books papers and writings respectively purport to be? Declare &c.

4th. Did you or not ever and when draw out any account in writing of or concerning the dealings or transactions of all or any and what kinds which were had or passed between the said G. G. and T. D. for any and how long time or times and from and to what times? Did you or not previously to or in order to the drawing out of such account, carefully or otherwise and how examine inspect or peruse all or any and which of the books papers or writings which were delivered or sent unto you for such purpose by or on behalf of the said complainant and the said T. D. respectively or by or on behalf of either and which of them? Look upon the book or writing &c. Is the same or not the account which, if any, was so drawn out by you, or a true copy thereof? Doth the said book or paper marked — contain a just and true account of all dealings and transactions between the said G. G. and T. D. for the time for which the same appears to be an account, or are there any and what errors omissions or false charges therein and for what reason? Point out all such errors omissions and false charges and how the same happened therein? Declare &c.

*To prove that a copy of the account as made out by the witness was sent to the deceased husband of the defendant.*

5th. Whether or no was a copy of the account which, if any, was drawn out by you as is inquired after in the 4th interrogatory, at or about any and what time delivered or sent and by whom unto the said T. D.? Was the same or not a true copy of the said book or writing &c. or did the copy which, if any, was so sent or delivered, in any and what respect differ or vary from the said produced books or writings marked &c.? Declare &c.

*To prove meetings had by the witness with the husband of the defendant in order to the settling of the account drawn out, what passed thereat and what acknowledgments were made by him.*

6th. Whether or not were any meetings had and how many in number between you and the said T. D. for or in order to the settling examining or considering of the said account which, if any, was drawn out by you as is inquired after in the 4th interrogatory? If yea, When or about what time and where were such meetings had, and how long were you and he together at each of such times? Did or not the said T. D. at all or any and which of such meetings with any and what degree of care or attention or otherwise and

how, examine the whole or any and what part of such account and all or any and which of the articles therein; and were or not any and what books papers or writings inspected or examined by him and you or one and which of you at such meetings or either and which of them? Set forth what passed between you and the said T. D. at such meeting touching the settling or adjusting inspecting or examining of the said account or in any manner relating to the several items or charges therein, and how the said T. D. at such respective meetings expressed himself relating thereto; Did or did not the said T. D. at any time and which of such meetings or at any and what other time in any and what manner acknowledge or allow the said account or any and what particulars thereof to be just and true? And did he or not finally make any and what objections thereto, or to any and what articles matters or things in his favor and to what amount?

7th. [*To prove in evidence the acknowledgments made by the deceased husband of the defendant, in his own handwriting, contained in an account book; see the 3d interrogatory inserted in p. 158, antea.*]

8th. [*To prove remittances of bills of exchange; the same interrogatory as inserted postea, p. 249.*]

Lastly. [*The concluding general interrogatory; see p. 153, antea.*]

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\* Do you know L. N. in the pleadings named, and how long and in what character were you acquainted with him, and can you [*or are you able*] by any and what means [*to*] speak to his hand-writing? Declare the truth, and your utmost knowledge remembrance and belief herein.

\* Look at the exhibit now produced and shown to you marked with the letter — and purporting to be a certain diary or account kept by the said L. N. between the months of January and October 1780; Whether or no is the same such diary or account, and in whose hand-writing is the said diary or account, and in what character or capacity was the same kept or written by the said L. N. or by any other and what person by name? Declare the truth &c. [*ut supra.*]

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*To prove the handwriting of and also to prove as an exhibit a diary or account kept by a land agent to a proprietor of extensive coal mines*

## EXHIBITS.

*To prove the signature to an agreement by some person acquainted with the party's hand-writing.*

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Whether or no are you by any and what means acquainted with the character and manner of hand-writing of the said defendant I. D.? And whether or no is the name I. D. appearing to be set and subscribed to the said produced paper-writing of the proper hand-writing of the said defendant I. D. as you know or believe? Declare &c.

*To prove the signature of a deceased person to an agreement, by persons acquainted with his hand-writing.*

Whether or no were you acquainted with R. D. late of — but now deceased, and did you ever see the said R. D. write, or are you by any and what other means acquainted with the character or manner of hand-writing of the said R. D.? Look upon the paper-writing now produced &c. Whether or no is the name R. D. appearing to be set and subscribed to the said produced paper-writing marked (A) of the proper hand-writing of the said R. D. or as you know or believe? Declare &c.

*To prove witness's signature to an agreement as agent for or on behalf of the defendant; what passed previously to his signing the same, and whether the defendant approved thereof.*

Look at the paper-writing marked with the letter (A) and now produced &c. Whether or no is your name appearing to be set and subscribed thereto for the said defendant of your proper hand-writing? If yea, When did you so set and subscribe your name thereto, and whether or no had you the instruction or direction of the said defendant to sign such paper or any such paper, or to make any such agreement or any other and what agreement with the said complainant; or did you at any time and when previously inform him or intimate to him that you would on his part sign such paper or make any agreement to any such or what other effect with the said complainant, and did he approve of such your intention or how otherwise; or did you at any time and when first afterwards inform him or in any and what manner intimate to him that you had such paper or made any agreement to any effect with the said complainant and did he approve thereof or how otherwise, or with what authority and with what intention did you so sign and subscribe the said paper-writing or agreement? Set forth &c.

*To prove the execution of an agreement which had been signed by the agent of one of the parties thereto;*

\* Are you acquainted with the character or manner of hand-writing of the said M. S. and the said A. W. and J. W. or either and which of them? If yea, Look on the paper-writing now produced and shown to you at this the time of



EXHIBITS.  

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your examination marked with the letter (A) purporting to be an agreement between the said M. S. on behalf of the said A. W. and the said J. F. bearing date —, and at the names M. S. and J. F. thereunto subscribed, and declare whether the same be of the respective hand-writing of the said M. S. and J. F. as you know or for any and what reason believe? And look at the name A. G. set and subscribed as an attesting witness to the execution of the said agreement, and is the same of your proper hand-writing, and did you see the execution of the said agreement by the said M. S. and J. F. or either and which of them? And look at the memorandum indorsed on the said agreement purporting to be a ratification of the said agreement by the said A. W. and the name A. W. thereunto set and subscribed; Is the said name of the proper hand-writing of the said A. W. as you know or for any and what reason believe? Declare &c.

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*And the memorandum indorsed, signed by such party, ratifying the act of her agent.*

\* Do you know the character and manner of hand-writing of —? If yea, Look upon the exhibits now produced and shown to you at this the time of your examination marked respectively — and purporting to be bills of exchange and promissory notes drawn indorsed or accepted by the said —, and look at the names — thereon respectively written as drawer indorser or acceptor of the said bill or bills of exchange promissory note or promissory notes or some and which of them; Are the names — thereon respectively written of the proper hand-writing of the said — as you know or for any and what reason believe? Declare &c.

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*To prove bills of exchange, promissory notes, &c.*

Look upon the bond or paper-writing now produced &c. Whether or no was the said produced writing at any time and when signed sealed and delivered or in any and what manner executed by any person and whom in your presence? And is your name set and subscribed as a witness thereto of your proper hand-writing, or whether or no were you acquainted with any person or persons whose name or names appear to be set or subscribed to the said bond or paper-writing as a witness or witnesses thereto? And

*To prove the execution of a bond by a subscribing witness, or if dead, by persons acquainted with the hand-writing of the subscribing witness or witnesses.*

## EXHIBITS.

did you ever see such person or persons write, or were you by any and what other means acquainted with the character or manner of hand-writing of such person or persons? And is or are the name or names of such person or persons so set and subscribed to the said bond or paper-writing of his her or their proper hand-writing? And whether or no is or are such person or persons now living or dead, and if dead, when and where did he she or they die as you do for any and what reason know or believe? Set forth &c.

Interrogatories to be exhibited &c. [see p. 148, *antea*,] in a cause wherein J. L. the elder and J. L. the younger are plaintiffs, and E. T. and J. G. are defendants, on the part and behalf of the said complainants.

1st. [*The general interrogatory as to knowledge of parties; see p. 152, ante.*]

*To prove the preparing a bond by witness as solicitor to a person since dead, for securing payment of a sum of money by the plaintiffs;*

*also to prove the bond as an exhibit;*

*the objection taken by them to the bond being prepared as a common money bond;*

*also to prove as an exhibit the minute made by witness of the actual consideration of the bond and by whose desire, or to prove the contents and purport thereof.*

2d. Whether or no were you in the year — employed by T. C. late of — in the county of — but now deceased and in the pleadings in this cause named as his attorney? Whether or no did you in that character or otherwise at any time and when in or about the month of — prepare a bond to be executed by the said complainants for the payment of the sum of £—— to the said T. C.? Look upon the paper-writing now produced &c.; Whether or no is such paper-writing the said bond so prepared by you as aforesaid? Whether or no did the said complainants or either of them in the presence of the said T. C. or otherwise object to the said bond being prepared as a common money bond, and for what reason and what passed thereupon between the said complainants or either of them and the said T. C. or yourself, and whether or no were you at any time and when desired by any person and whom and in whose presence to make a minute in writing of the actual consideration of the said bond, or to any such or the like and what effect, and whether or no did you make any such minute, and whether or no with the consent or in the presence of the said T. C., and whether or no did you then or at any time and when read over such minute to or in the presence of the said T. C. and the said complainants

or either of them; and did the said T. C. make any and what observation thereupon? Look upon the paper-writing now produced &c. Whether or no is the said paper-writing the minute so written by you as aforesaid, or what hath become of such minute, and set forth the contents and purport thereof to the best and utmost of your recollection and belief? Declare &c.

3d. Look upon the paper-writing now produced &c. Whether or no is your name set and subscribed as a witness thereto of your proper hand-writing? When and where and in whose presence did you so set and subscribe your name as a witness thereto? Whether or no previously to the execution of the said bond did any conversation pass between the said complainants or either of them and T. C. in the said bond named, as to the consideration of the said bond? If yea, Set forth the particulars of such conversation and what was said thereon by the said T. C. and the said complainants or either of them or any other person or persons to or in the presence or hearing of the said T. C? Declare &c.

Lastly. [*The last general interrogatory; see p. 153, antea.*]

*Observations.*—The bill charges the bond to have been given for the purchase of T. C.'s interest in two farms, — farm and — farm. By the answer it appears that T. C. had not at that time — farm, and there is therefore a plain mistake in the bill, which ought to be amended before the replication is filed. The motion to amend should be amending defendant's office-copy, and requiring no further answer and will create therefore no delay. Inquiry ought to be made of Mr. H. as to this minute in writing. If he has it he must be served with a subpoena *duces tecum* to produce it upon his examination. If he delivered it over it may be necessary to give notices or to take other measures before parol evidence can be given by Mr. H. of its contents.

Look upon the two bonds or paper-writings now produced and shown to you at this the time of your examination marked with the letters (A) and (B); Whether or no were or was the same or either and which of them made and executed by you at the times they respectively bear

*To prove the execution of two bonds, and under what circumstances.*

## EXHIBITS.

date or when else and under what circumstances and for what considerations respectively, and on what terms and conditions were you articulated as a clerk to the testator W. G. in the pleadings in this cause named? Declare &c.

*To prove that a case was laid before counsel, and by whom, and the points submitted for counsel's opinion.*

\* Whether or no was any case during the life of the said Sir T. B. submitted to any and what counsel or other legal person and whom by name for his advice and opinion upon any matters relating to the said memorandum of agreement or release or either and which of them, and if yea, by whom was such case so submitted and by whose authority and directions, and what were the points thereby submitted for such opinion and advice? Set forth &c.

*To prove as an exhibit the case which was laid before counsel, with his opinion thereunder written;*

\* Look upon the exhibit or paper-writing now produced and shown to you marked with the letters Z. Z. and purporting to be a case stated by you the before-named M. S. for the opinion of C. F. esq. formerly of Bream's Buildings, with his opinion thereon, dated the 24th day of August 1790; Whether or no are the same such case and opinion respectively and by whom was the said case drawn up and prepared and in whose hand-writing is the same, and is the opinion thereunder written in the hand-writing of the said C. F. or was the same written by his authority and dictation as you do for any and what reason know or believe, and did you receive the same in answer to the case so submitted to the said C. F. as aforesaid; And whether or no did you or any other person being the agent of or in any manner employed by the said Sir T. B. or by the said defendants or either of them prior to or in the month of September 1790, submit any other case than that set forth in the last mentioned exhibit upon any other question concerning the said memorandum of agreement and release or either and which of them for the opinion and advice of the said C. F. or any and what other counsel or legal person for his advice or opinion; And whether or no did you state such case and take such opinion of your own authority or suggestion or by any direction from the said Sir T. B. for that purpose; And whether or no did he ever know of such opinion being taken or hear of or see the same? Set forth &c.

*Also to prove whether witness, by the direction of a deceased person, or of his own suggestion, laid any other case before counsel relative to the matters before submitted to counsel.*

\* Look upon the paper or exhibit now produced and shown to you at this the time of your examination marked (A); From whom and upon what occasion did you receive the same, and was the same delivered to you or to any other person to your knowledge or belief and by whom as a particular or catalogue of any and what sale? Declare &c.

## EXHIBITS.

*To prove a catalogue of sale as an exhibit.*

Whether or no doth the said produced writing marked A. contain the words following or any and what other words, that is to say; [*Setting out the instrument verbatim.*] Have you or not at any time and when and with whom examined and compared the said produced writing with the words set forth in this interrogatory as being a copy thereof? Declare &c.

*To prove the contents of an exhibit.*

\* Whether or no did the said defendant C. L. as you do or for any and what reason believe deliver or cause to be delivered unto the said S. D. in his life-time a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was or were due or owing by or from the said S. D. to the said defendant C. L.? If yea, In what character and language was such account or writing written or made out, and when or about what time was the same delivered to the said S. D. and what was or were the particular or particulars of such debts or debt sum or sums of money, and how much did the same amount unto in the whole as you know remember or believe? Whether or no did the said S. D. as you know or do for any and what reason believe peruse or examine the said account? Did or did not the said S. D. ever deliver the said account to you? If yea, When or about what time and for what purpose did he deliver the said account to you? Did you or did you not by the order or direction of the said S. D. or otherwise and how at any time and when make or write a true copy of the said account? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time and when and by whom delivered to the said S. D.? And did or did not the said S. D. at any time or times and when peruse or examine the said copy,

*To prove as an exhibit the copy made by witness by the direction of a deceased person, of an account which had been delivered to him of monies owing by him; in what language the account and the copy thereof were written; the observations which the deceased wrote on the copy, and in what language; and requiring the witness to translate the copy, distinguishing his own and the deceased's hand-writing.*

## EXHIBITS.

and did he or did he not in his own hand-writing or otherwise and how and in what language and character and at or about what time or times make or write any and what minutes memorandums or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you, or any and what parts or part thereof of your own hand-writing? If yea, How much or what part or parts thereof is or are of your own hand-writing? And how much and what part or parts thereof is or are of the hand-writing of any other person or persons and whom as you know or do for any and what reason believe? Is or is not the said paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) and all the minutes memorandums and observations written or made thereon into and set forth the same in the English language, and in making such translation distinguish and point out the English of so much or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons and whom? Declare &c.

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*To prove a copy of an agreement having been delivered to the defendant.*

Look upon the said paper-writing or agreement now produced &c.; Whether or no did you at any time and when and where deliver to the said defendant any paper-writing purporting to be a copy of the said paper-writing, and was the same a true copy thereof? And whether or no did you at the time of delivering such copy produce to the said defendant the said original paper-writing or read the same to him, and did any thing and what pass between you and the said defendant thereupon? Declare &c.

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*To prove as an exhibit a copy of a draft previously to any alterations being made therein.*

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked —; Is or not the same the copy made or caused to be made by you of

the said draft lease previously to the alterations made therein? And is or not the said exhibit a true and exact copy of such draft lease previously to such alterations? Declare &c.

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\* Look upon the paper-writing or exhibit now produced and shown to you at this the time of your examination marked with the letter —; Did you compare or examine the same with any and what books or book of the Governor and Company of the Bank of England or with any and what book or books entry or entries or not? If yea, Does the same contain a true copy of such book or books entry or entries with which you so examined or compared the same or not? Declare &c.

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Look upon the parchment-writing now produced &c. purporting to be a copy of a court roll; Did you at any time or times and when carefully examine the same with the court roll of any and what manor by name? If yea, Is the same a true copy of the court-roll of which the same purports to be a copy as you know or believe? Declare &c.

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Did you at any time or times and when and where examine the same with any entries or entry thereof made in the court rolls or court books of the manor of M. in the county of H. and are or is the same or any and which of them true copies or a true copy of such entries or entry? Declare the truth and your knowledge herein.

Look upon the paper-writings now produced and shown unto you at this the time of your examination marked with the letters A., B. &c.; Whether or no did you at any time and when and where examine the same with any entries thereof made in any and what court rolls of the manor of K. in the pleadings in this cause mentioned? And whether or no are the same true copies of such entries? Declare &c.

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## EXHIBITS.

*To prove a copy of an entry of stock in the Bank stock books.*

*To prove a copy of a court roll.*

*To prove as an exhibit a copy made of entries on the court rolls (in proving the customs of a manor.)*

*To prove copies of entries on the court rolls.*

## EXHIBITS.

*To prove a copy of an entry in a parish register book.*

Look upon the paper-writing now produced &c. Did you at any time and when and where carefully examine the same with any entry thereof made in the register book of any and what parish or place? If yea, Whether or no is the same a true copy of such entry? Declare &c.

*To prove copies of entries in register books of births, burials, &c.*

Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters A., B. &c. ; Whether or no did you at any time and when and where carefully examine the same with any entries thereof made in the register books of any and what parishes or places and are the same true copies of such entries respectively? Declare &c.

*To prove copies of entries in registers of baptisms, burials, &c. In whose custody the registers were, to whom the entries relate, and by what means witness was acquainted with them.*

\* Look upon the writings now produced to you marked No. 1. &c. What do the same severally purport or appear to be? Did you ever and when examine the same or any and which of them with any and what registers or register of baptisms or burials kept in any and what parish or place? If yea, When did you so examine the same, and in whose custody or power were or was such registers or register respectively? Are or is such produced writings true copies or transcripts of any and what entries in such registers or register concerning any and what person or persons, and who is or are or was or were such person or persons respectively as you know or for any and what reason believe, and particularly were you ever and when and by what means acquainted with such person or persons respectively? Declare &c.

*To prove copies of entries in parish registers as relating to persons mentioned in the pleadings, and the degree of relationship which such persons bore to a deceased person.*

\* Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters — ; Did you compare and examine them or either and which of them with the register books of or kept for any and what parishes or places, and are they or is either and which of them true copies or a true copy of any and what entry or entries in any and which of such register books as you know or for any and what reason believe? And do any or either and which of such exhibits as you for any and what reason know or believe relate to the births marriages or deaths of any or either and which of the persons mentioned in the pleadings of this cause? And what degree of relationship did such persons respectively bear to the said intestate J. N. ? Declare &c.



What is the proper Ecclesiastical Office for the probate of wills of persons dying in the parish of W., commonly called — in the county of W.? Whether or no have you carefully examined such office for the purpose of finding wills of J. C. late of &c. who died in or about the year —, and of T. C. late of —, who died in or about the year —? If yea, Have you found any will of the said J. C. or of the said T. C. or either and which of them, or doth it appear that administration of the goods chattels rights and credits of the said J. C. or of the said T. C. was at any time and when granted to any person or persons and to whom? Look upon the paper-writings now produced and shown to you at this the time of your examination marked with the letters A. B. &c.; Whether or no are the same true copies of entries in the register books of the said Ecclesiastical Office? Set forth &c.

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\* Did you at any time and when receive any and what hand-bills from any person or persons and whom by name relating to or for the discovery of A. G. in the pleadings of this cause named? If yea, Look upon the exhibit now produced and shown to you at this the time of your examination; Is the same a true copy of such hand-bills as you know or for any and what reason believe, and did you distribute or cause to be distributed any and what number of such hand-bills of which the said exhibit is a copy in any and what place or places and by any and what means? Declare &c.

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Look upon the paper-writings now produced and shown to you at this the time of your examination marked respectively with the letters F. G. &c.; Whether or no did you at any time and when and where carefully examine the same with any writings or inscriptions upon any and what tomb-stones or monuments in any and what churches or church-yards? If yea, Whether or no are the same true copies of such writings or inscriptions respectively? Declare &c.

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## EXHIBITS.

*To prove search made for wills of particular persons, and discovery made of grants of letters of administration to their estates;*

*also to prove copies of entries in the register books of the Ecclesiastical Office.*

*To prove as an exhibit a copy of hand-bills distributed for the discovery of a person.*

*To prove copies of inscriptions on tomb-stones.*

## EXHIBITS.

*To prove the copy of a judgment.*

\* Look upon the paper-writing now produced and shown to you at this the time of your examination marked —, and purporting to be a copy of a judgment in his Majesty's Court of — at Westminster, in a certain cause in which — are plaintiffs and — defendants. Did you compare and examine the said paper-writing with any and what record or roll, and where did you so examine and compare the same, and is the same a true copy of such record or judgment? Declare &c.

*To prove copies of judgments.*

\* Look upon the paper-writings now produced and shown to you at this the time of your examination respectively, marked with the letters —, and respectively purporting to be copies of judgments in his Majesty's Court of — at Westminster against the said E. F. Did you compare or examine all or either and which of such paper-writings or writing with any and what record or roll, and where did you so examine or compare the same or either and which of them, and are or is the same or either and which of them true copies or a true copy of such records or record or judgment or judgments respectively? Declare &c.

*To prove the copy of an inquisition of lunacy, and of the order directing a traverse.*

[The commission of lunacy being under the great seal proves itself.]

\* Look upon the paper-writings or exhibits now produced and shown to you at this the time of your examination marked respectively —. Did you compare and examine both or either and which of such exhibits with any and what original filed or kept in any and what office? And when did you so examine and compare the same or either and which of them respectively, and are they or is either and which of them respectively true copies or a true copy of such originals respectively? Declare &c.

*To prove as exhibits copies of maps or plans and of a book of reference, the originals whereof were directed by Act of Parliament to be deposited in a particular office; also to prove that a piece of land and stone quarry were comprised in the original maps.*

\* Have you or not ever and when examined the maps or plans and book of reference mentioned and referred to in and by the Act of Parliament in the pleadings in this cause mentioned? If yea, Where were such maps or plans and book of reference then kept or deposited? Look upon the maps or plans and book of reference now produced and shown to you at this the time of your examination marked with the letters —; Are or is such last-mentioned maps or plans and book of reference or either and which of them so far as the same relate to the piece of ground mentioned

or described in the said original maps or plans and book of reference mentioned or referred to in and by the said Act of Parliament as No. 15 in the parish of—, true and correct copies or a true and correct copy of such original maps or plans and book of reference? And have you or not at any time and when examined the same with such original maps or plans and book of reference? Were or not the said piece or parcel of land and quarry in the preceding interrogatory mentioned comprised or included in the said original maps or plans and book of reference under the said description of No. 15 in the parish of — at the time of the passing of the said Act of Parliament as you know or do for any and what reason believe? Declare &c.

EXHIBITS.

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter —; Is the said exhibit a true copy of any and what original paper, and did you or not at any time and when compare the said exhibit with any and what original paper? And did you or not at any time and when in particular serve upon or deliver to any and what person or persons upon any and what occasion and by whose order or direction, the said original paper of which the said exhibit is a true copy, and what did such person or persons say at the time of the service or delivery of such original paper, and by whom was such original paper signed, and how do you know who signed such original paper? Declare &c.

*To prove the copy of a notice, and when such notice was served, by whose direction, and by whom signed.*

\* Are you acquainted with any custom existing at the Bank of England as to keeping letters of attorney by which persons entitled to or possessed of stock authorize others to accept such stock in their names and to receive and give receipts for dividends upon such stock? If so, Set forth what such custom is; And look upon the paper-writing produced and shown to you at this the time of your examination marked with the letter (A); Is the said writing a true and exact copy of any and what letter of attorney formerly and when and by whom and for what purpose deposited with and now in the custody of the said Bank of England or how otherwise? Declare &c.

*To prove the custom at the Bank of England of retaining powers of attorney to receive dividends;*

*Also to prove as an exhibit a copy of a power of attorney there deposited.*

## EXHIBITS.

*To prove copies of records.*

\* Look upon the parchment or paper-writings produced and shown to you at this the time of your examination marked respectively with the letters A. &c.; Whether or no do or doth the same or any or either and which of them contain a true copy or copies of any and what record or records of any and what court or courts of any and what original or originals of which the same do or doth purport to be a copy or copies? Have you or not carefully examined or compared the said produced papers or writings or either and which of them, with such, if any, record or records or other original or originals, and when where and with whom? Declare &c.

*To prove copies of original writings, and in whose custody the same were, and the purport thereof.*

\* Look upon the paper-writings now produced and shown to you at this the time of your examination, and marked with the letters —; What do the same severally purport or appear to be? Are or is the same or any and which of them true copies or transcripts or a true copy or transcript of the whole or any and what part of any and what original writings or writing, and did you examine and compare the said produced writings or any and which of them, and in whose custody or power were such original writings respectively or any and which of them at the time you so examined and compared such produced writings therewith respectively? What did such original writings purport or appear to be? Declare &c.

*To prove the registering of a deed by a copy of the registry, and the indorsement of such registration on the exhibit.*

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter (B); Is or not such exhibit a true copy of any and what register or enrolment of any and what deed in any and what office for registering of deeds in any and what county? And did you or not compare such exhibit with any and what record or original enrolment in any and what office for the registering of deeds in any and what county? And do you or not know when such enrolment was made? And is not such register or enrolment the register of the said exhibit marked (A) in the preceding interrogatory mentioned and referred to? And is not such register or enrolment indorsed on the said exhibit marked (A), and is or not the said indorsement a true copy of the registry of the said deed in the register book for any and what county? Declare &c.

\* Look at the parchment-writing now produced and shown to you at this the time of your examination marked with the letter (B) purporting to be a counterpart copy of a lease from the said A. W. to the said J. H. bearing date the — day of —; Did you or did you not examine the said counterpart with any and what deed from — to J. K. of —, and is or not the said parchment-writing a true copy of the same? Declare &c.

## EXHIBITS.

*To prove as an exhibit a counterpart of a lease, and that the same corresponded with a former lease of the same premises.*

\* Do you or not hold any and what office under the Ecclesiastical Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? If yea, Do you or not know the common seal of and which is used by the said Corporation? If yea, Look at the exhibit marked — and now produced and shown to you at this the time of your examination, and look at the seal thereto fixed and annexed; Is the said seal the common seal of the said Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? And if yea, By whose order direction and authority and when and by whom was the said seal affixed or annexed to the said exhibit as you know or for any and what reason believe? Declare &c.

*To prove a corporation seal affixed to a deed.*

\* Was or not the said testator J. M. deceased at the time of his death justly and truly indebted to the said complainant in any and what sum or sums of money on simple-contract? If yea, Look upon the paper-writing now produced and shown to you at this the time of your examination marked —; Does or not the said paper-writing contain a just or true account of the particulars of such debt or debts, and are or not the charges therein contained fair and reasonable as you know or for any and what reason believe? Declare &c.

*To prove the debt due to the plaintiff according to the particulars contained in an exhibit.*

Look upon the deed or writing now produced &c.; Whether or no was such deed or writing at any time and when signed sealed or delivered in your presence by any person or persons and whom? And were you a subscribing witness

*To prove the execution of a deed by the subscribing witness.*

## EXHIBITS.

to the signing sealing or delivery thereof by such person or persons? And is your name indorsed and set as a subscribing witness thereto of your proper hand-writing? Declare &c.

*To prove a marriage settlement by the subscribing witnesses.*

\* Look upon the [ paper or ] parchment-writing now produced and shown to you at this the time of your examination marked with the letter (A) and purporting to be a settlement made on the marriage of the said J. B. with the said A. R.; Did you or not see the same signed sealed and delivered and by whom respectively and when and where and in whose presence? And look upon the names — subscribed thereto; Are such respective names of the respective hand-writing of the said —? And look upon the names — signed as witnesses to the said exhibit; Is either and which of those names of your proper hand-writing, and did you see either and which of the said other witnesses write their names as witnesses thereto, and were you and such other witnesses present at the time the respective parties or either and which of them signed sealed and delivered the said deed? Declare &c.

*To prove the execution of a deed and payment of the consideration-money by the subscribing witnesses.*

\* Look upon the exhibit now produced and shown to you at this the time of your examination marked with the letter (A), and look upon the indorsement on the back of the said exhibit; Did you or not at any time and when see the said exhibit sealed and delivered by any and what person or persons and delivered as the act and deed of any and what person or persons and whom by name? And did you or not see the indorsement or acknowledgment at the back of the said exhibit signed and by whom, and did you or not see the money in the said acknowledgment mentioned to have been received paid and by and to whom? And are the names — indorsed and set as one of the subscribing witnesses to the sealing and delivery of the said exhibit and the receipt of the said consideration-money of your own proper hand-writing? And are the names and characters — indorsed and set as the names of the other subscribing witnesses attesting the sealing and delivery of the said exhibit and the receipt of the said consideration-money of the proper hand-writing of the said — or whom else, and did you see the said — set his name as a subscribing witness to the due execution of the said exhibit and the receipt of the consideration-money? Declare &c.

\* Look upon the exhibit or exhibits now produced and shown to you at this the time of your examination marked —, and look upon the indorsement on the back of the said exhibit or exhibits respectively; Did you or not at any time and when see the said exhibit or exhibits or either and which of them sealed and delivered by any and what person or persons and delivered as the act and deed of any and what person or persons and by whom respectively by name? And did you or not see the indorsement or indorsements acknowledgment or acknowledgments at the back of the said exhibit or exhibits and either and which of them signed by any and what person or persons and by whom by name, and were you or not a subscribing witness to the sealing and delivering of the said exhibit or exhibits or either and which of them by any and which of the parties thereto, and to the signing of the receipt or receipts for the said consideration-money by any and what person or persons, and is your name set or subscribed as such witness to such sealing and delivering and to such receipt respectively of your own hand-writing, and is or are the name or names of the other subscribing witness or witnesses attesting the sealing and delivering of the said exhibit or exhibits or either and which of them or the receipt or receipts of the said consideration-money of the proper hand-writing of such respective witnesses or either and which of them, and set forth how and by what means you are acquainted with the character or manner of hand-writing of the said other witnesses to the said exhibits or either and which of them, and did they or either and which of them sign and attest the execution of the said exhibit or exhibits and either and which of them by any and what person or persons and the indorsement on the back thereof by any and what person or persons in your presence? Declare &c.

Look upon the deeds or parchment-writings now produced &c.; Whether or no were or was the said produced writings or either and which of them at any time and when signed sealed and delivered or in any and what manner executed by any persons or person and whom in your presence, and is your name set and subscribed as a witness thereto of your proper hand-writing? Look upon the writing indorsed upon the back of the said deed or parchment writing marked (B) and purporting to be a receipt for the

## EXHIBITS.

*General interrogatory to prove the execution of one or more deeds by the subscribing witnesses, and the signatures to the receipts indorsed.*

*[Where the instructions furnished are not sufficiently accurate.]*

*To prove the execution of deeds, and the signature to a receipt indorsed on the back of one of them.*

## EXHIBITS.

sum of £——; Whether or no was such writing so indorsed at any time and when signed by any person and whom in your presence, and is your name set and subscribed as a witness thereto of your proper hand-writing? Set forth &c.

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*To prove as an exhibit a lease which had been tendered to the defendant; also to prove applications made to him to accept the lease and execute a counterpart, and the reasons of his refusal.*

[See the first interrogatory in p. 203, *antea*.]

\* Look at the parchment-writing now produced and shown to you at this the time of your examination marked with the letter (C), purporting to be a lease from the said complainant A. W. to the said defendant, and bearing date ——? Did you or not at any and what time and by whose order or direction tender the said lease and the counterpart in the preceding interrogatory mentioned or either and which of them to the said defendant, and did you or not at any and what time and by whose order and direction request the said defendant to accept the said lease and execute the said counterpart, and did or did not the said defendant refuse to comply with such requests or either and which of them and for what reason as you know or for any and what reason believe? Declare &c.

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*To prove certain letters as having been written by the witness, and the receipt of the sums therein mentioned.*

Look upon the paper-writings now produced &c. Whether or no were or was such produced writings or either and which of them or any and what part thereof, or the name H—— P—— appearing to be set and subscribed thereto of your proper hand-writing? And whether or no did you duly receive the several sums therein respectively mentioned or any and which of them according to the purport and effect of the said paper-writings or either of them? Declare &c.

*To prove a letter written by the solicitor of the defendants to the plaintiff's solicitor.*

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Of whose hand-writing is the said paper-writing and the name R. R. set and subscribed thereto, and the superscription or direction thereof as you know or for any and what reason believe? Who acted as the solicitor or solicitors of the said complainant with respect to the purchases in the said bill of complaint mentioned? And whether or no did the said R. R. in any and what manner act with respect to the said purchases on the part and behalf of any and which of the said defendants? Declare &c.



Look upon the letter or paper-writing now produced &c. ; Whether or no is the said produced letter or paper and the signature thereto and the direction thereof or either and which of them of your proper hand-writing or of the proper hand-writing of any person and whom employed by you, or was such letter or paper-writing written by any person and whom by your direction and instruction or with your approbation or privity, and what was your motive or inducement for such letter or paper-writing being written and sent by you or by your direction or instruction or with your privity or approbation, and did not such motive or inducement equally apply to the said defendant T. B., and if not why? Declare &c.

\* Are you or not by any and what means acquainted with the character or hand-writing of L. N. in the pleadings in this cause named? Look upon the paper-writing or letter now produced and shown to you at this the time of your examination marked with the letter (A), and purporting to be a letter written by L. N., and bearing date the 31st day of October 1789; In whose character or hand-writing is the said letter written, and in whose character or hand-writing is the name L. N. signed or subscribed thereto, and when and upon what occasion was the said letter written? Is or is not Mr. J. to whom the said letter purports to be directed the said defendant J. J. ? Whether or not did the said J. J. ever receive the said letter? Whether or not did you know or were you by any and what means acquainted with the said L. N.? If yea, How long did you know him, and whether or not was he the steward or agent of Sir T. B. in the pleadings in this cause named? Whether or not do you know the reason why or what it was that induced the said L. N. to write the said letter? If yea, Whether or not was the said letter written on account of or in consequence of any applications made to the said Sir T. B. or to the said L. N. respecting the purchase of the coals in the said letter mentioned? If yea, Set forth when and by whom such applications were made and the purport and effect thereof, and all the particulars relating thereto; set forth the situation of the lands under which the coals lay which were the subject of such applications? What do you understand to have been the meaning of the words " Cold harbour &c. at Wibsey" in the said letter contained? Do you know or can you set

## EXHIBITS.

*To prove a letter as being in the witness's own hand-writing, or as having been written or sent by his direction, and the motive or inducement for writing it.*

*To prove a letter as an exhibit;*

*the hand-writing and signature and the occasion of its being written;*

*that it was written to one of the defendants,*

*that he received the same,*

*Also to prove how long witness was acquainted with the person who wrote the letter; that he was steward to Sir T. B.;*

*the reason which induced him to write the letter;*

*that it was in consequence of applications to purchase certain coal lands, and by whom made;*

*The meaning of a particular expression in the letter;*

## EXHIBITS.

*and whether any meeting took place respecting the purchase of the coals, and what passed thereat.*

forth whether or not the said defendant J. J. or the said J. H. the elder after the said 31st of October 1789 had any interview or meeting with the said Sir T. B. or with the said L. N. for the purpose of treating respecting the purchase of the coals in the said letter mentioned? If yea, Set forth when and where and upon what occasion such meeting took place, and set forth to the best of your remembrance and belief the conversation that passed at such meeting, and who was present thereat.

*To prove two letters as exhibits, and the hand-writing, signatures, and superscriptions, and to whom addressed, and his situation in life;*

\* Look upon the exhibits now produced and shown to you at this the time of your examination marked respectively with the letters —, and purporting to be letters addressed by you to some person and whom by name, and dated respectively 18th March 1811 and the 19th day of April in the same year; In whose hand-writing are the said two exhibits respectively and especially the signature and superscription, and to whom by name were the same respectively addressed and sent and by what means, and what was the situation or employment of the person to whom the said respective letters were so directed and sent, and by what means are you enabled to state that the same respectively were addressed and written to such persons; and in whose hand-writing is the indorsement on the back of the said exhibit dated the 19th of April 1811, and by what means are you enabled to state the same? And whether or no are or is the said exhibits respectively or either and which of them the original letters or letter addressed and sent by you as in the former part of this interrogatory mentioned or a copy or copies thereof or extract or extracts therefrom, and how do you know and are you enabled to state the same? Declare the truth together with your means of knowing and reasons for believing the same.

*also to prove the hand-writing of an indorsement on the back of one of them, and whether the exhibits are the original letters or copies or extracts therefrom.*

*To prove as an exhibit the mandate of induction under the Bishop's seal.*

[*Et vide postea, p. 220.*]

Look upon the paper or parchment-writing now produced &c. Whether or no is the seal appendant thereto the proper seal of the Bishop of —, or is the name set and subscribed thereto the proper hand-writing of the said Bishop, and was the same so set and subscribed in your presence, and is your name set and subscribed as a witness thereto

of your proper hand-writing? And of whose hand-writing is the indorsement on the back of the said writing, and was the same written in your presence, and is your name subscribed as a witness thereto of your proper hand-writing? Whether or no was the said complainant at any time and when and by whom inducted into the possession of the parish church of &c. in your presence and in the presence of any other person or persons and whom under and by virtue of such mandate? Declare &c.

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (B); Of whose hand-writing is the said paper-writing and the signature thereto and the superscription thereof? Whether or no was the said paper-writing sent to the said complainant or any person and whom on his behalf at any time and when by you or by your direction? And whether or no were you employed as the solicitor or attorney of the said defendants R. R. and C. his wife and R. W. or any or either and which of them in the matter of the purchases made by the said complainant and in the said bill mentioned? Declare &c.

Whether or no did you at any time in or about the year —, and on or about what day or days in particular deliver to the said complainants respectively or either and which of them and where, any and what writing purporting to be a notice from the defendant of her desire that the defendant should not be disturbed in the possession of any and what house, or to any such or the like effect? Was or not the name of the defendant subscribed thereto or to either and which of them? Were both such notices or writings in the same words and figures or in any and what respect different from each other? Did you or not keep a copy of each or either and which of such notices or writings which if any were or was so delivered? Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (B); Is the same or not a true copy of each or either and which of the notices or writings which if any were or was so delivered? Did you or not ever examine and compare the said produced writing with the notices or writings so delivered or with either and which of them? Declare &c.

## EXHIBITS.

*Also to prove the hand-writing of the indorsement thereon;*

*And whether the plaintiff was duly inducted, and when and in whose presence.*

*To prove a notice sent to the plaintiff's solicitor by the solicitor for the defendants, and the hand-writing, signature, and address.*

*To prove service of notices upon the plaintiffs, by whom signed, and the contents thereof; also to prove as an exhibit a copy made by witness of the notices.*

## EXHIBITS.

*To prove a printed particular of sale as the one by which premises were sold by auction.*

\* Look at the exhibit now produced and shown to you at this the time of your examination marked (A); Is or not the same the particular which was produced by the vendor or the agents of the vendor at the time of the sale of the premises in the pleadings of this cause mentioned? And is or not the said exhibit the particular by which the said premises were sold, and was or not the said exhibit read to the company present at the said sale, and was or not the same declared to the said company to be the particulars and conditions of sale? Declare &c.

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*To prove a promissory note.*

Look upon the paper-writing now produced &c. and purporting to be a promissory note for £—— from A. B. deceased in the pleadings of this cause named to the said complainants, and bearing date the —— day of ——; Whether or no did you ever see the said A. B. write, or are you by any other and what means acquainted with the character and manner of his hand-writing; And whether or no is the name A. B. appearing to be set and subscribed to the said produced paper-writing of the proper hand-writing of the said A. B. as you for any and what reason know or believe? Declare &c.

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*To prove receipts by persons acquainted with the hand-writing of the party signing the same.*

\* Look at the exhibits now produced and shown to you at this the time of your examination marked respectively A. B. C., and look at the names respectively signed to such exhibits; Do you know the parties whose names respectively appear to be set or subscribed to the said respective exhibits, and are you by any and what means acquainted with the character or manner of hand-writing of either and which of them respectively? If yea, Of whose hand-writing is or are such exhibit or exhibits, and in particular of whose respective hand-writing is or are the respective names set or subscribed to such respective exhibits? Set forth the reasons on which you form your belief; Declare &c.

Look upon &c. Whether or no were or was any and what receipts or receipt indorsed thereon or on any or either and which of them at or about any and what times or time by any and what persons or person in your presence? Are you or not a subscribing witness to the signing of all or any or either and which of such receipts by all or any or either and which of such persons, and of whose hand-writing is your name now appearing to be set or subscribed as a witness to all or any and which of such receipts? Declare &c.

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## EXHIBITS.

*To prove receipts indorsed on deeds by the subscribing witness.*

Look upon the paper or parchment-writing now produced and shown to you at this the time of your examination marked with the letter (A) and consisting of — sheets or skins; Whether or no was the said produced writing at any time and when signed sealed published and declared by W. H. late of — the testator in the pleadings in this cause named, as and for his last will and testament in your presence and in the presence of any other person or persons and whom by name; or did the said testator in any other and what manner execute the said produced writing, or acknowledge the same as and for his last will and testament in your presence and in the presence of any other person and persons and whom? Whether or no is your name and the name or names of the other person or persons set or subscribed as a witness or witnesses thereto, of your his or their proper hand-writing respectively? And whether or no did you and such other person or persons or either and which of you set or subscribe your name or names as a witness or witnesses thereto in the presence of the said testator? And whether or no is or are such subscribing witness or witnesses now living or dead? And if any or either of them are or is dead, where and when did such witness or witnesses die as you for any and what reason know or believe, and if any or either of them are living, where do they respectively or where doth he reside? Whether or no was the said testator at the time of his signing sealing publishing and declaring the said produced writing as and for his last will and testament, or otherwise executing or acknowledging the same, of sound and disposing mind

*To prove a will by the attesting witnesses.*

## EXHIBITS.

memory and understanding, or how otherwise, as you for any and what reason know or believe? Set forth &c.

[ *Or thus:* ]

\* Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Did or not the said testator J. M. deceased sign seal publish and declare the said paper-writing as and for his last will and testament in the presence of you and of any other and what person or persons, or are you or not a subscribing witness to such the signing and publishing or execution of the said will by the said testator J. M., and are or not the several names set or subscribed as witnesses to the signing and publication or execution of the said will by the said testator J. M. of the proper hand-writing of you and of such other person or persons whose names appear to be subscribed, and did or not you and such other person or persons respectively subscribe and set your and their names as witnesses to the signing and publication or execution of the said will by the said testator J. M. in the presence of the said J. M. and of each other, or how otherwise, and what is now become of such other persons, and where do they respectively now live and reside, or are or is any or either and which of such persons now dead? And if yea, When and where did they or he die? And was or not the said testator J. M. at the time of signing and publishing or executing his said will of sound and disposing mind memory and understanding, as you know or do for any and what reason believe? Declare &c.

*To prove a will and codicil where one of the subscribing witnesses is dead.*

\* Look upon the writings now produced to you, and marked with the letters (A) and (B) and purporting to be the last will and testament of J. P. in the 2d interrogatory named, and a codicil thereto? Did you at any time and when see the said J. P. sign seal publish and declare the said produced writings or either and which of them as and for her last will and testament and a codicil thereto, and is the name J. P. set and subscribed to the said produced writings respectively, or either and which of them, of the proper hand-writing of the said J. P.? Were you and was or were any and what person or persons besides yourself present at the time when such produced writings or either and which of them were or was so signed sealed published and de-

clared, and did such persons or person or any and which of them see the said J. P. sign seal publish and declare the said produced writings or either and which of them, and did you and any other and which of such persons or person set or subscribe your their his or her name or names to such produced writings respectively or either and which of them as a witness or witnesses thereto, or to either and which of them, and was or were such name or names, or any and which of them so subscribed in the presence of the said J. P. or not? Is or are your name or names or the name or names of any other and what person or persons appearing to be set or subscribed to such writings respectively or to either and which of them as a witness or witnesses thereto or to either and which of them, of your hand-writing or of the hand-writing of such person or persons respectively, or of any and which of them, and did you see such person or persons or any and which of them set and subscribe such produced writings or either and which of them? Is or are such person or persons or any and which of them dead? And if yea, When did they respectively or any and which of them, die? Was the said J. P. at the time she signed sealed published and declared such produced writings or either and which of them of sound mind memory and understanding? Declare &c.

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Whether or no were you acquainted with the manner of living of the said A. B.? And if yea, At what sum upon the average do you compute the annual expenses of himself and his family to have been, other and besides his travelling expenses, and whether or no had the said A. B. any child who did not live in his family and in what situation was such child, and have you ever heard the said A. B. make any and what declaration or declarations as to what such child annually cost him, and do you know the manner in which the said A. B. usually travelled in the journies in which he was employed as treasury messenger and at what expense? Declare &c.

Whether or no had the said A. B. as you for any and what reason know or believe, any and what means of providing for the expenses of himself and his family and for

*To prove the average annual expenses of the family of a person deceased, who was in his life-time employed as a treasury messenger, and as to declarations made by him as to what one child, not resident in his family, annually cost him, also to prove the manner in which he usually travelled, and at what expense.*

*To prove whether a person had other means of providing*

*for his family besides what he received as a treasury messenger.*

the expense of journies, other than from the monies which he from time to time received from the said F. G.? Declare &c.

*To prove the state of a family in proving a pedigree.*

Whether or no did you know M. S. formerly of &c. and when or about what time did the said M. S. die? And whether or no did you know W. C. formerly of &c. and S. C. his wife, and was the said S. C. in any manner and how related to the said M. S., and when or about what time and where did she die, and what children had the said S. C., and what children survived her, and if any child or children of the said S. C. died in her life-time, did such child or children have any child or children, and what is become thereof? And whether or no did you know J. C. of &c. the son of the said S. C., and S. C. the younger and E. C. the daughters of the said S. C., and did the said S. C. ever and when marry, and when and where did he die, and whether testate or intestate, and had he or did he leave any child or children? And if yea, What is become thereof? And did the said S. C. the daughter of the said S. C. ever and when marry and to whom and when and where did she die, and what children had she or did she leave? And whether or no did you know W. C. and T. C. sons of the said S. C. the younger, and what became of the said W. C., and did he ever and when marry as you know or believe, and did the said T. C. ever and when marry, and where and when or about what time did he die and whether testate or intestate, and had he or did he leave any child or children? And if yea, What is become thereof? And did the said E. C. the daughter of the said S. C. the elder ever and when marry and to whom, and when or about what time did she die, and had she or did she leave any child or children? And if yea, What is become thereof? Whether or no did you know the father of the said W. C. of &c. the husband of the said S. C. the elder, and what was his name and where did he live, and when or about what time and where did he die, and what child or children had he besides the said W. C., and who was his eldest son and who was his second son, and did his eldest son in case the said W. C. was not his eldest, or if the said W. C. was his eldest did his second son at any time and when and where marry, and when and where did he die, and had he or did he leave any and what child or children? And whether or no is the said



complainant his eldest son or who else is such eldest son? Set forth the particulars at large, according to the best of your knowledge remembrance and belief, and the truth declare.

\* Whether or no were any changes made in the out-fences of the two farms in the pleadings mentioned to have been occupied by James K. and John K. respectively at any time within your memory, and how long have you known the said farms respectively, and especially were any changes made in the out-fences thereof in or about or prior to the year 1773 or at some and what other time in particular? And whether or no were you and during what period of time in particular in the habit of attending at the collection of payment of rents to Sir T. B. in the pleadings named or to his agent, at the place and on the days of the collection and payment thereof, and did you attend at any and what dinner and by and to whom given on such days? And if yea, Whether or no during such period as you attended thereat, and especially before the year 1773 and for some and what time prior thereto did one person attend to pay rent and attend at the said dinner as the sole tenant or occupier of the said two farms, or did two persons so attend as several and distinct occupiers the one of the one farm and the other of the other of the said two farms, and whether or no was the rent for the said farms paid as two separate rents paid by two tenants, or as one gross rent paid by one? And whether or no as you do for any and what reason know or believe were the said two farms prior and how long prior to the said year 1773 assessed for and did pay government taxes and parish rates as two separate and distinct farms or as one joint and undivided farm? And whether or no in the year 1789 and how long previously thereto were the said two farms commonly known and reputed in the neighbourhood thereof to be one joint farm and held by one tenant or two separate and distinct farms held by two tenants, and for what reason were the same so reputed, and state the various occupiers of the said two farms and under whom they have respectively occupied, and the names and descriptions whereby the said two farms have been known since you have known the same? Declare the truth and your utmost knowledge remembrance and belief herein.

*To prove when alteration was made in the out-fences of two farms,*

*whether rent was paid as for two farms or as one farm, and whether one person attended at the rent-receipt day, and at the dinner given to the tenants as sole tenant of the two farms, or whether two persons attended as tenants;*

*also to prove whether, previously to the year 1773, taxes and rates were assessed as for two farms or as one farm;*

*and whether the farms were reputed to be one farm or two farms.*

*To prove the practice of the Duchy Court of Lancaster as to the mode of proceeding to be adopted to bar the operation of a fine of lands therein.*

\* Are you by any and what means acquainted with the Duchy Court in the county palatine of Lancaster in levying fines of lands therein and of the proceedings to be adopted by persons coming in upon the usual proclamations and making claim to lands for the purpose of barring the operation of fines sought to be levied in the said court? If yea, Set forth what is the practice and mode of proceeding necessary to be pursued by any person coming in upon any of the proclamations made upon levying a fine in the said court and making a claim for the purpose of barring the operation thereof; and in particular is it the practice of the said court for the person coming in and making such claim, first to substantiate his title to make such claim by exhibiting filing or inrolling any and what document showing his pedigree or right to enter such claim? If yea, Set forth the practice of the said court relative to the matters inquired after by this interrogatory, and when such practice commenced, and how and in what manner you became acquainted therewith; Declare &c.

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*To prove goods sold and delivered by the plaintiffs to the defendant.*

Do you know of any goods having been at any time previously to the month of — sold or delivered by the said complainant H. H. or by the said complainant J. A. to the said defendant R. P.? If yea, Set forth what goods were so sold and delivered by the said complainants H. H. and J. A. or either and which of them to the said R. P., and what was the value thereof, and at what time or times in particular the same were delivered to the said R. P. and how and by what means in particular you are acquainted with the several matters aforesaid: Declare &c.

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*To prove the hand-writing of entries made in books, whether the same are correct or not, and if incorrect to prove in what respects they are so.*

\* Look on the several books or exhibits now produced and shown to you at this the time of your examination, marked respectively with the letters —; Are you or not and by any and what means acquainted with the character or manner of hand-writing of the person or persons who made the several entries in the said books or any and which of them? If yea, Of whose hand-writing are such entries or any and which of them, and who made such entries or

occasioned such entries to be made as you know or for any and what reason believe? Are the entries and accounts therein contained just and right as you know or for any and what reason believe? If not, What error or errors are therein contained? Set forth the same error or errors, if any, fully and distinctly? Declare &c.

\* Look upon the book now produced and shown to you at this the time of your examination marked with the letter (A), and on the entry or entries made therein in folio — ; Are you acquainted with the character or manner of hand-writing of the person or persons who made such entry or entries, or any or either and which of them, and did you see such person or persons or either and which of them write? If yea, Of whose hand-writing is or are such entry or entries or either and which of them or any and what part thereof as you know or believe, and is or are such person or persons living or dead that made such entry or entries or any and what part thereof, and on what occasion or by whose direction was or were the same or any and what part thereof made as you know or believe? Declare &c.

*To prove the hand-writing of entries made in a book, and whether the persons who made such entries are living or dead, and by whose direction the same were made.*

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\* Did you know A. B. in the pleadings of this cause named, and for any and what length of time? If yea, Do you or not know whether he was ever married, and had he or not any child or children by his wife, and what was or were the name or names of such child or children, and which of such children was the eldest son, and is such eldest son now living? Declare &c.

*To prove the eldest son of a deceased person as being his heir at law.*

\* Did you know E. M. in the pleadings of this cause named, and for any and what length of time? If yea, Do you or not know whether he was ever married, and if not, had he any brothers and what were their names and the order of their births, and which of them have survived him, and which of them was his eldest brother? Declare &c.

*To prove the brother of a deceased person, as being his heir at law.*

\* Did you or not know J. E. the testator in the pleadings of this cause named? If yea, Do you or not know whether the said J. E. was ever married, or whether he had any

*To prove the nephew of a deceased person, as being his heir at law.*

legitimate child or children, or whether such child or children survived him or died in his life-time, and whether such child or children left any and what issue, and whether such issue is or are now living; and do you or not know whether the said testator J. E. had any brothers and sisters, and what were their names, or whether they or either of them survived him, and whether either and which of such brothers and sisters had any child or children, and what were their names, and which was the eldest son of the eldest brother of the said testator, and do you or not know who is the heir at law of the said testator? And if yea, In what degree of kindred is he to the said testator, and how does he appear to be his heir at law?

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*To prove that the lord of a manor assented to the inclosure of the common lands, on the proposal of the land-owners within the township.*

Whether or no do you know who is the lord of the manor of S. in the county of C. in the pleadings in this cause mentioned, and whether or no has the said lord or any person and whom on his part in any and what manner assented to the inclosure of the common lands in the said township of S. and when and to whom and upon what terms and upon whose application or applications, and whether or no in consequence of any and what agreement or proposal on the part of the inhabitants or land-owners within the said township, and whether or no is the lord of the said manor still assenting to such inclosure, and whether or no is such inclosure likely to take effect, and how soon? Set forth &c.

*To prove that the inhabitants or land-owners within a township had agreed to the inclosure of the common lands, and when the inclosure is likely to take effect.*

Whether or no have the inhabitants or land-owners within the said township of S. or any and which of them in any and what manner assented or agreed to the inclosure of the common lands within the said township, or made any and what proposals to any person or persons and whom in respect of such inclosure, or taken any and what steps with a view to such inclosure, and at what time or times respectively, and whether or no are the said inhabitants or land-owners still assenting to the inclosure of the said common lands, or how otherwise, and whether or no is such inclosure likely to take effect, and how soon? Set forth &c.

Whether or no hath any surveyor or other person been at any time and when employed at the charge of the inhabitants or land-owners within the said township or any and which of them, or any other person and whom, to survey the common lands within the said township, with a view to the inclosure thereof? Set forth &c.

Whether or no has any general or other and what meeting been held, and when, of the inhabitants and land-owners of the said township of S. and of the inhabitants or land-owners of any and what adjoining township or townships for the purpose of fixing the limits of the common lands of each township or for any other and what purpose, with a view to an intended inclosure of the common lands of the said township of S.? Set forth &c.

Whether or no do you know or can you by any and what means form any opinion as to the quantity or quality of the inclosed and common lands within the said township of S.? If yea, What is the quantity of all the inclosed lands within the said township, and what is the quantity of the lands within the said township belonging to the said complainant in the pleadings of this cause mentioned, and what is the relative quality of the said inclosed lands within the said township, and what is the quantity of all the common lands within the said township, and what do you estimate would be the fair proportionable quantity of the said commons and fields which in the case of an inclosure would be allotted to the said complainant in respect of his inclosed lands aforesaid, computing the proportion of the said common lands to be allotted to the lord as one-twelfth? Set forth &c.

*To prove that a surveyor has been employed to survey the common lauds within a township.*

*To prove that a meeting has been held of the inhabitants of a township, and also of an adjoining township, for the purpose of fixing the limits of the common lauds, previously to an inclosure.*

*To prove the probable quantity of common land which would be allotted to the plaintiff with reference to the quantity to be allotted to the lord of the manor.*

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Whether or no did the said T. B. and J. E. or either and which of them, or any other person and who on their or either and which of their part and behalf, at any time and when after the date of the aforesaid letter or paper-writing call at your office or see you elsewhere and where and inform you or any other person and whom on your part and behalf that they or either and which of them had employed or meant to employ Mr. J. or any other person than yourself as their solicitor in the said cause, and when and

*To prove that the defendants informed the witness, their solicitor, of their intention to employ another solicitor, and when it first came to his knowledge.*

by what means did you first know or had reason to believe and suspect that the said defendants or either and which of them had or meant to employ the said Mr. J. or any other person than yourself as their solicitor in the said cause? Declare &c.

*To prove whether witness informed his clients, two of the defendants in a cause, that he should instruct counsel to appear for them at the hearing, what instructions he received from them, and whether he did in fact deliver briefs to counsel other than the briefs delivered for other defendants, and when he first knew that another solicitor had prepared briefs for counsel.*

Whether or no did you at any time and when before the said cause came on to be heard inform the said defendants T. B. and J. E. or either and which of them that you should instruct counsel to appear for them at the hearing, or did you at any time and when receive any instructions from the said defendants or either and which of them so to do, or did you in fact give any briefs or instructions to counsel to appear for the said defendants or either and which of them other than the briefs delivered by you for the other defendants, and did you not previously to such hearing and when first know that the said Mr. J. as the solicitor for the said defendants T. B. and J. E. had taken copies of the depositions and had prepared or meant to prepare briefs for the instruction of counsel at the hearing on the part of the said defendants or one and which of them? Declare &c.

*To prove the institution and induction of the plaintiff into a vicarage.*

Was or not the said complainant at or about any and what time admitted instituted and inducted into the said vicarage of C. with the said chapelry of N. L. annexed or how otherwise? If yea, Hath he or not been during all or any and what part of the time since vicar of the said parish and chapelry, and hath he or not during all or any and what part of such time acted or officiated as vicar of the said parish or chapelry? Declare &c.

*To prove the letters of institution by the Bishop's officer.*

[See the 2d interrogatory in p. 208, antea.]

Look upon the paper or parchment-writing now produced and shown to you or by you at this the time &c.; Whether or no is the seal appendant thereto the proper seal of the Bishop of —, and did the said complainant receive institution according to the effect thereof at any time and when and from whom? Declare &c.

Whether or no did you know W. G. late of — but now deceased, the testator in the pleadings of this cause named, for any and how long a time previously to his death, and did you know S. J. the nephew of the said testator, and in what profession or situation of life was the said S. J.? Did the said S. J. ever and when serve on board his Majesty's ship U. and in what character and what has become of the said S. J. as you know or for any and what reason believe? Declare &c.

Look upon the paper-writing now produced and shown to you at this the time of your examination marked with the letter (A); Whether or no did you at any time and when compare the same with any entry in any and what book kept at his Majesty's Navy Office, and whether or no is the same a true copy of such entry? Declare &c.

*To prove a knowledge of a person who entered the navy, and in what character, and what has become of him;*

*also to prove a copy of an entry in a book kept at the navy office.*

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\* How many years as you do for any and what reason know or believe prior to the year 1780 was the said L. N. land-agent to the said Sir T. B. or to the owners and proprietors of the said W. estate, and whether or no as you do for any and what reason know or believe prior to the year 1780 was the said L. N. land-agent to the said Sir T. B. or to the owners or proprietors of the said W. estate, and whether or no as you do for any and what reason know or believe was the said L. N. during the whole or any and what part of such period accustomed to keep such diary or account as is contained in the exhibit which has been shown to you or any and what diary or account of his agency or of the matters relating thereto, and up to what period of time in particular did he keep such diary or account of his agency, and why did he then cease or discontinue keeping the same, and whether or no did he ever afterwards keep any and what diary or account of his said agency or the matters relating thereto, and if not why not? Declare the truth and your utmost knowledge remembrance and belief herein.

*To prove for how many years a person was employed as land agent to the proprietors of an estate (containing coal mines); also to prove that he kept a diary or account of his agency, and when he discontinued keeping the same.*

*To prove the residence of a person in England, and in what language he corresponded or conversed;*

*also to prove a knowledge of his hand-writing,*

*and in what works he was engaged, and where he carried on the same.*

\* When and upon what occasion did the said S. D. come to live and reside in England and for how long time did he live or reside there? In what language did the said S. D. always or generally write or correspond and converse during the time of his residence in England, and was he or was he not conversant in the English language? Are you or are you not well or in any and what degree acquainted with the character and manner of hand-writing of the said S. D., and have you or have you not frequently or at any times and how often seen him write in any and what language or languages and character? Did or did not the said S. D. when he was resident in England manage or carry on or employ himself in or about any work or works? If yea, Of what nature sort or kind was or were such work or works, and when and for how long time and at or in what house or houses or place or places was or were the same so managed or carried on? Declare &c.

*To prove the loans of sums of money by the plaintiffs to the defendant.*

Do you know of any money having been at any time previously to the month of — lent or advanced by the said complainant H. H. or by the said complainant J. S. to the said defendant R. P.? If yea, Set forth what sums of money were so lent and advanced by the said complainants H. H. and J. S. or either and which of them to the said R. P., and at what time or times in particular the same and each of them were and was so lent and advanced, and how and by what means in particular you are acquainted with the several matters aforesaid? Declare &c.

*To prove loans of sums of money by the defendant to a deceased person, and whether any part was repaid.*

\* Whether or no did the said defendant C. L. in the life-time of the said S. D. lend or advance unto the said S. D. any sum or sums of money? If yea, What sum or sums of money and to what amount in the whole did the said defendant C. L. lend or advance unto the said S. D. in his life-time, and when or at or about what time or times was or were the same so lent or advanced? And did or not the said S. D. at any time or times in his life-time and when repay such sum or sums of money or any or either and which of them unto the said defendant C. L. or satisfy him the same? Declare the truth of the matters inquired after by this interrogatory according to the best of your know-



ledge remembrance and belief, together with the grounds reasons or circumstances on which such your belief is founded, fully and at large.

Whether or no was there on the — day of — any and what sum of money due and owing to the above-named complainants T. B. and B. B. and their partners in the R. Bank in respect of monies advanced by the said complainants to or for the use or on the account of the said T. B. and B. B. and their said partners or how otherwise and what is now due to the said complainants in respect thereof? Set forth &c.

*To prove the amount due to the plaintiffs in respect of advances made by them as bankers.*

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\* Do you or not know whether the said J. B. deceased and A. R. also deceased in the pleadings of this cause named did at any time and when intermarry together or not? If yea, Were you present at such marriage ceremony or not, and by whom and in the presence of what witnesses and at what place and when and on what day in particular was such marriage solemnized and whether by banns or license? Declare &c.

*To prove marriage ceremony by witnesses present.*

Whether or no was the said J. C. in the preceding interrogatory mentioned or inquired after ever and when married and to whom, and what was the maiden name of his wife? Had or not the said J. C. any and what children or child or issue by his said wife or by any other wife and whom by name, and particularly had he or not a daughter called by the name of —, and had he or not any other children or child and of what names or name? Declare &c.

*To prove a marriage, and that the parties had one daughter.*

Whether or no do you know or were you acquainted with the said A. C. in the preceding interrogatory mentioned or inquired after for any and how long time and from and to what time? Did or not the said A. C. ever and when intermarry with M. H. late of &c. and now deceased, and when and about what time did the said M. H. die? Declare &c.

*To prove a marriage and the death of the wife.*

*To prove that witness has been employed in mining concerns, and his knowledge of the coal mines lying under an estate;*

*the dip or inclination thereof from the horizon, and the nature and course of the drains or soughs made for the purpose of carrying off the water and loosing the coals;*

*also to prove that the coals lying under lands within a ring-fence have been loosed, and are in a condition to be worked without the aid of a steam engine;*

*also to prove whether the same were so at the date of an agreement, and when and by whom the coals and*

\* Whether or not have you ever been employed in mining concerns or are you acquainted with coal mines and the manner in which coals are won and got? If yea, Set forth the nature of your profession or occupation and how you came to be acquainted with the nature of coal mines and the method of winning and getting coals; Whether or not do you know the R. H. estate in the pleadings in this cause mentioned and the mines and minerals lying thereunder and the estates in the pleadings in this cause mentioned to have been the property of Sir T. B. in the pleadings in this cause named deceased or any of them? If yea, Set forth how long you have known them and each of them and how and by what means you became acquainted with them; Whether or not are there any coal mines strata of coal or minerals lying under such estates or any part thereof? If yea, State what is the dip or inclination of such coal mines from the horizon; Whether or not was it necessary for the purpose of winning and getting such coals or coal mines that the same should be loosed or freed from water? Whether or not did Mr. L. in the pleadings in this cause mentioned drive any drain or make any sough or soughs for the purpose of loosing the coals and coal mines lying under the said R. H. estate? If yea, Set forth and describe particularly the nature of such drain or drains sough or soughs and set forth particularly the direction and course of such drain or drains sough or soughs from the tail or opening thereof where the water is discharged throughout the full extent of the driving of and the making of the same; Whether or not are the coals and coal mines lying under the lands and grounds within the ring-fence in the pleadings in this cause mentioned now loosed and in a condition to be worked won and got without the aid of a steam engine to pump up and discharge the water therefrom? If yea, Whether or not are such last-mentioned coals and coal mines so loosed and in a condition to be won and got by means of the said drain or drains sough or soughs? And whether or not is the water drained or carried away from such last-mentioned coals and coal mines by means of such drain or drains sough or soughs? Whether or not were such last-mentioned coals and coal mines so loosed and drained at the date of the agreement with the said Sir T. B. in the pleadings in this cause mentioned? Set forth when and upon what occasion and by

whom such last-mentioned coals and coal mines were loosed and drained; Whether or not could the said defendant J. J., and R. H., J. H. and J. D. in the pleadings in this cause named or either of them have prevented such last-mentioned coals and coal mines from being loosed or drained? If yea, Set forth how and by what means they could have prevented the same from being loosed or drained; If such last-mentioned coals and coal mines had not been loosed or drained by means of a drain or sough, whether or not would it have been necessary in order to win and get the same that a steam engine or steam engines should be erected for such purpose? If yea, Set forth how many steam engines would have been necessary for that purpose; Set forth the original expense or prime cost of such steam engines or steam engine, and set forth the annual expenses that would be incurred in keeping in repair and in the working of such steam engines or steam engine; Suppose the coals lying under the lands occupied by Jonathan K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam engine, what in your opinion would be the present value of such last-mentioned coals and coal mines? Suppose the coals lying under the lands occupied by James K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam engine, what in your opinion would be the present value of such last-mentioned coals and coal mines? Declare &c.

\* From what points of the compass do the beds or strata of coal under the said W. estate or under any and what part thereof in general rise and sink, and especially from and to what points do the beds of coal or either and which of them being underneath such parts of the said estate as lie to the west of the sough or drain in the last preceding interrogatory mentioned rise and sink, and from and to what points do such of the beds of coal under the said estate as lie to the east of the said sough or drain rise and sink respectively, and from what distance therefrom do they rise or sink respectively? Declare the truth and your utmost knowledge remembrance and belief herein.

\* Whether or no supposing a bed or vein of coal to have a general inclination downwards from one given point to another is it common or uncommon to find occasional va-

*mines were loosed and drained, and whether certain defendants could have prevented the same and how;*

*Also if the mines had not been drained by means of a sough, whether one or more steam engines would not have been necessary, and what would have been the expense thereof, and of keeping the same in repair, and working the same.*

*Also to prove what would have been the value of the coals lying under the lands of different tenants, supposing the coals could not have been loosed or drained without a steam engine.*

*To prove the inclination from the horizon of certain beds of coal lying under different parts of an estate.*

*To prove that veins of coals which incline downwards, occasionally vary in the dip;*

*and that the coals under the lands in question are subject to such variations, and supposing a sough driven along the lower side, how would the coal found in the parts varying from the general inclination be loosed and worked.*

*To prove that the plaintiffs had sunk pits and erected steam engines on the lands of a particular tenant at the date of an agreement,*

*and when the same were sunk and erected and the purpose for which the steam engines were erected,*

*and whether the defendants or their stewards, agents, or tenants were informed thereof or privy thereto.*

*Also to prove whether a former steward of the defendants inspected the estate, and saw the pits and engines, and that the same might have been seen at a considerable distance;*

*Also to prove that the present steward some years ago inspected the estate, and that he could see the pits, steam engines, and other works.*

riations in the dip of such bed or vein between the two points aforesaid? And if yea, Whether or no is the coal to be found under the lands and grounds in the second of these interrogatories mentioned or referred to as much or more subject to such occasional variations than beds or veins of coal to be found under other lands and grounds in general, and assuming such occasional variations to exist and a sough or drain driven along that side of the bed which according to the general inclination would be the lowest side, how would such parts of the coal as might occasionally vary from such general inclination be loosed and worked? Declare the truth, together with your means of knowing and reasons for believing the same.

\* Whether or not had the said complainants or those through whom they claim sunk any pits or pit or made and erected any steam engines or steam engine or got any coals or coal in the lands and grounds occupied by the said Jonathan K. in the pleadings in this cause mentioned at the date of the agreement therein mentioned? If yea, Set forth when such pits or pit steam engines or steam engine were or was sunk made and erected; Set forth the purpose for which such steam engines or steam engine were or was made or erected; Whether or not were the said defendants or their or any of their stewards agents or tenants informed of or acquainted with or were they privy to the sinking making and erecting such pits or pit engines or engine? If yea, Set forth when and to whom and by whom such information was given; Whether or not was a Mr. B. the steward or agent of the said defendants or either of them? If yea, Did he ever inspect or overlook the said defendant's estate at W. in the pleadings in this cause mentioned? If yea, Whether or not did he upon such inspection see the said pits and engines? Whether or not are such pits and engines large objects and easy to be seen at a considerable distance? Whether or not is a person of the name of H. the steward or agent of the said defendant's W. estate? If yea, Whether or not did the said — H. about eight years ago inspect or overlook the said estate? Whether or not did you then see him, and if yea, Was he when you saw him in such a situation that he could see the said pits and steam engines and other works in the lands and grounds occupied by the said Jonathan K.? Declare &c.

\* Whether or no in grants or leases of coal where there are two beds or strata of coal whereof the upper bed or stratum is united to or intermixed with or contiguous to a bed of iron-stone is it necessary as you do for any and what reason know or believe to dig and get the upper bed of coal before the iron-stone can be dug and got and *vice versá*; and whether or no is it usual to sell and dispose of such upper bed or stratum when the iron-stone is not also sold and disposed of, but if nevertheless the upper bed of coal should be sold and the iron-stone reserved, whether or no would any and what provisoes and stipulations be necessary in order to prevent a grantee in fee or lessee having the power so to work the said upper bed of coal as to destroy entirely or to damage greatly and in what manner the said iron-stone from delaying to work and dig such bed of coal so as to lock up and render useless the said iron-stone as long as he might think fit, and what provisions and stipulations would be proper and necessary for the purposes aforesaid, namely, 1st. What provisoes and stipulations are necessary and proper to prevent the lessee or grantee so working such upper bed of coal as to destroy or greatly damage the said iron-stone; and 2dly. What provisoes and stipulations are proper and necessary to prevent the said iron-stone from being locked up and rendered useless to the grantor at the will of the grantee in fee, and whether or no did you ever hear of a grant or lease of any upper bed or stratum of coal so united and intermixed or contiguous as aforesaid with provisoes or stipulations proper for the above purposes, and by whom and to whom was any such grant or lease made? Set forth &c.

*To prove the method of working coals where there are two strata and one of them is intermixed with a bed of ironstone, and in case of the sale of the upper stratum of coal what stipulations are usually made to prevent the grantee from destroying the ironstone, or to prevent the ironstone from being rendered useless to the grantor at the will of the grantee, and what instances have come within the witness's knowledge.*

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[For a form of title, *vide antea*, p. 149.]

On behalf of the defendants.

1st. [General interrogatory as to knowledge of the parties; *vide antea*, p. 152.]

\* 2d. Are you or not now an inhabitant of or an occupier of land within the parish of St. D. in the pleadings of this cause mentioned, or the bounds limits and titheable places thereof? Declare &c.

*To prove whether witness is an inhabitant or occupier of land within the parish.*

*To prove how long witness has known the parish, and how long he resided therein, and as to the titheable matters which were grown or kept by him during such time.*

\* 3d. Whether or no are you in any and what manner acquainted with the rectory or parish of St. D. in the pleadings in this cause mentioned? And if yea, How long have you been acquainted therewith, and did you or not ever and when and for what length of time live or inhabit within the said rectory or parish; and did you or not in or during all or any and what part of such time, or at any other and what time, occupy or hold as owner or tenant any and what farm or farms garden or gardens orchard or orchards or other and what lands within the said parish or the titheable places thereof; and did you or not during all or any and what part of such time keep within the said parish any cow or cows which produced you milk or brought forth calves, or any sow or sows which brought forth pigs; and did you or not during such time occupy any lands within the said parish of which you cut the grass and made the same into hay or upon which you grew wheat oats peas beans rye or seeds, and did you or not during such time occupy any garden within the said parish producing wall-fruit, or any orchard within the said parish, and did you or not during the time you lived in the said parish depasture any cattle within the said parish not employed to plough or pail? Declare &c.

*To prove the moduses or customary payments payable in lieu of the tithes of hay, wheat, &c. &c.*

\* 4th. Whether or not as you know or have been informed or have any and what reason to believe is or are any and what modus or moduses or customary payment or payments payable by all or any of the occupiers of lands within the said parish of St. D. to the rector of the said parish or his farmer or lessee, for and in lieu and satisfaction of the respective tithes of hay wheat oats peas beans rye seeds orchard-fruit and garden wall-fruit respectively renewing and forthcoming within the said parish and the bounds limits and titheable places thereof, and for and in lieu and satisfaction of the tithe of the depasturing of any cattle not employed to plough or pail, kept fed and depastured in any lands within the said parish and the bounds limits and titheable places thereof, and for and in lieu and satisfaction of the tithe of milk of cows kept fed and depastured in any lands within the said parish and the bounds limits and titheable places thereof, and for and in lieu and satisfaction of the calves of the same cows falling brought forth and forthcoming within the said parish and the bounds limits and titheable places thereof, and for and in lieu and

satisfaction of the tithes of pigs falling brought forth and forthcoming from sows kept within [ *or* ' of the tithes of pigs farrowed within &c. ] the said parish and the bounds limits and titheable places thereof? And if yea, At what time or times is or are such modus or moduses payable, and how long hath or have the same been payable, and how long and from what period of time past hath or have the same been paid, and to what time has or have such modus or moduses been paid as you know or verily believe; and whether or not is or are such modus or moduses or customary payment or payments payable and paid, and has or have the same always been payable within and throughout all the said parish, or how otherwise; and has or not or have or not such respective moduses or customary payments or some or one and which of them from any and what time past down to some and what time, been accepted and taken by or on behalf of the rector of the said parish for the time being or his farmer or lessee for and in lieu and satisfaction of such respective tithes or some and which of them; and have you or not heard any thing and what from any and what ancient or other persons now deceased concerning the payment of such respective moduses or customary payments or either and which of them? Declare &c.

\* 5th. Have you ever and when paid or rendered any and what modus or moduses or customary payment or payments to the vicar or rector of the said parish or any other and what person or persons for and in lieu and satisfaction of any or either and which of the species of tithe or tithes in the said 4th interrogatory mentioned? If yea, Declare and set forth respectively what you so paid for the same, and at what time and to and for whom and for what length of time you so paid the same respectively? Declare &c.

\* 6th. Whether or not as you know have heard or believe has or have any tithes in kind of the respective species of tithes in the 4th interrogatory mentioned or any and which of them and how often been rendered and paid by any and what occupiers of land within the said parish to and for the use of any and what rector of the said parish, or his or their lessee or lessees or farmer or farmers, or any and what person or persons on his or their behalf? Declare and set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, with the

*also to prove whether such moduses prevail throughout the parish,*

*and whether the same have been accepted by the rector,*

*and what witness has heard from deceased persons.*

*To prove payment of the moduses.*

*To prove whether any and what tithes in kind have ever been rendered to the rector.*

manner in which you heard, and the reasons why you believe the same fully and at large; Declare &c.

*To prove that the defendants paid some of the moduses up to a certain period;*

*Also to prove a tender made to the plaintiff in respect of the other moduses, and his refusal to accept the same.*

*To prove whether the owner or occupier of particular lands paid tithes or a modus to the rector, and what witness has heard from deceased persons respecting the lands being tithe-free.*

\* 7th. Whether or not as you know have the said defendants or either and which of them paid to or for the use of the said complainant, any and what sum or sums of money as and for a modus in lieu and satisfaction of tithes in kind of any and which of the species of tithe in the 4th interrogatory mentioned, and up to any and what period of time past? And have or not the said defendants respectively, or any or either and which of them at any and what time or times respectively tendered to the said complainant or offered to pay him any and what money for or in respect of such moduses in the 4th interrogatory inquired after, or any and which of them? And if yea, Did or not the said complainant refuse to accept the same? Declare &c.

\* 8th. Do you or not know whether the owner or occupier for the time being of ——— ever and when paid any tithes in kind or any and what modus or customary payment to the rector of the said parish for the time being or his lessee for or for any and which of the respective species of tithe in the 4th interrogatory mentioned, and have you or not heard any thing and what from any and what ancient or other persons now deceased concerning the said lands being or not being tithe-free? Declare &c.

Lastly. [*The concluding general interrogatory; vide antea, p. 153.*]

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[*For a form of title, vide antea, p. 149.*]

On the behalf of the defendants.

1st. [*General interrogatory as to knowledge of the parties; vide antea, p. 152.*]

*To prove how long witness has known the parish, and how long he resided therein;*

\* 2d. Whether or not are you in any and what manner acquainted with the vicarage or parish of Y. in the county of D. and the chapelries of L. and C. thereunto belonging, in the pleadings in this cause mentioned? And if yea, How long have you been acquainted therewith; and did you or not ever and when and for what length of time live or inhabit within the said vicarage or parish or chapelries or any or either and which of them; and did you or not in or



during all or any and what part of such time or at any other and what time occupy or hold as owner or tenant any and what farm or farms or lands within the said parish or the titheable places thereof; and did you or not during all or any and what part of such time keep any cow or heifer or cows or heifers within the said parish and chapelries which produced you milk? And if yea, Are you or not now an inhabitant of or an occupier of land within the said parish? Declare &c.

\* 3d. Whether or not as you know or have been informed or have any and what reason to believe, is or are any and what modus or moduses or customary payment or payments payable by all or any of the occupiers of lands within the said parish of Y. and the said chapelries of L. and C., having or keeping a cow or heifer or cows or heifers yielding milk to the said vicar of the parish of Y. or his farmer or lessee, for and in lieu and satisfaction of the tithe of milk of such cow or heifer or cows or heifers? And if yea, At what time or times is or are such modus or moduses or sum or sums of money payable, and how long have or hath the same been payable, and how long and from what period of time past hath or have the same been paid, and whether or not from time whereof the memory of man is not to the contrary, and to what time has or have such modus or moduses been paid as you know or verily believe? And whether or not is or are such modus or moduses or customary payment or payments payable and paid, and has or have the same always been payable and paid by all the occupiers of land within the said parish and chapelries having such cow and heifer cows and heifers throughout all the said parish and chapelries or how otherwise; And has or not or have or not such modus or moduses or customary payment or payments been always and from time whereof the memory of man is not to the contrary, or for any and what part of such time down to what time past, accepted by or on behalf of the vicar of the said parish for the time being or his farmer or lessee in lieu and satisfaction of the tithe of milk of such cows and heifers respectively? And hath there or not as you know or believe been any variation in the time of such modus or moduses or customary payment or payments being paid? And if yea, To what as you know or believe was it owing that such time of payment was so varied? And have you or

*also to prove what lands he occupied, and whether he kept cows or heifers producing milk; also whether he is still an inhabitant or occupier of land.*

*To prove a modus payable in lieu of the tithe of milk;*

*whether the same is payable throughout the parish,*

*and whether any variation has occurred in the time of such modus being paid.*

not heard any thing and what from any and what ancient or other person now deceased, concerning the payment of such modus or moduses or customary payment or payments? Declare and set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, with the manner in which you heard and the reasons why you believe the same, fully.

*To prove a knowledge of the farms occupied by the defendants,*

*that it has been customary for the defendants and the former occupiers thereof to pay a composition in lieu of tithes to the vicar, and how the payment of such composition first arose;*

\* 4th. Whether or not do you know the farm called C. farm in the pleadings in this cause mentioned to be in the said parish of Y. and to be in the occupation of the said defendant T. K., and how long have you known the same, and do you or not know the other farms and lands in the occupation of him and the said other defendants, and how long have you known the same? Has it or not as you know or have heard and believe, been customary or usual for the defendant T. K. and any and what former occupiers of the said farm called C. farm and for the said defendants respectively or any of them, and any former owners of their respective farms and lands besides the said farm called C. farm, and for all or any and how many of the other occupiers of land within the said parish of Y. to pay to or for the use of the vicar of the said parish or his lessee or farmer and for the vicar or his lessee or farmer to receive any and what sum or sums of money as or by way of a composition for the tithes in general or any and which of the tithes in general or the vicarial tithes of or arising from the said farm called C. farm and the other farms and lands occupied by the said several defendants and the other farms and lands within the said parish of Y. or any and which of them? And if yea, What is the nature of such composition or compositions, and how long has it been customary or usual for such composition or compositions to be paid and received, and when and in what manner and for what reason did such composition or compositions or manner of paying tithes first arise as you have heard and believe or as it is reputed, and was it or not owing to any and what agreement made relating thereto? And if yea, When and by and between whom and on what occasion and for what reason was such agreement first made? And whether or not was or were and is or are the modus or moduses or customary payment or payments by the 3d interrogatory inquired after comprised or included in such composition or compositions or understood or intended to be comprised or

*Also to prove whether the modus for milk is comprised in such composition, and also any agreement relating thereto,*

included therein, and was or were or not the same to be prejudiced or affected by such composition or compositions? And was or not any and what agreement ever and when made relating thereto? And have you or not heard any thing from any ancient person or persons now deceased respecting such composition or compositions and the origin thereof? Declare and set forth the particulars of such composition or compositions and all you know and have heard and believe concerning the matters inquired after by this interrogatory, with the manner in which you heard and your reasons why you believe the same, and set forth the general reputation touching the matters inquired after by this interrogatory, fully and at large.

\* 5th. Whether or not as you know or have heard and believe, have or has any and what tithes in kind of milk or any and what composition or satisfaction for the same, other than such modus or moduses or customary payment or payments or composition or compositions as are by the 3d and 4th interrogatory inquired after, been ever and when and how often rendered and paid by any and what occupiers of land within the said parish and chapelries having cows or heifers, to and for the use of any and what vicar or vicars of the said parish or chapelries or his or their lessee or lessees or farmer or farmers or any and what person or persons on his or their behalf? Declare and set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, with the manner in which you heard and the reasons why you believe the same, fully.

\* 6th. Whether or not as you know, have or hath the said defendants respectively or any or either and which of them paid to or for the use of the said complainant, any and what compositions for their tithes or the vicarial tithes or any and which of them to any and what period or periods of time past, and have or not the said defendants respectively or any or either and which of them at any and what time or times since tendered to the said complainant or offered to pay him any and what money for or in respect of such composition or compositions? And if yea, Did or not the said complainant refuse to accept the same? Declare &c.

\* 7th. Whether or not as you know or have heard the said complainant say and acknowledge, did the said complainant ever and when enter into any and what agreement

*and what witness has heard from deceased persons respecting such composition.*

*To prove whether tithe in kind of milk was ever paid or any other modus or composition than those before referred to.*

*To prove up to what period the defendants have paid their compositions, and a tender since made to the plaintiff, and his refusal to accept the same.*

*To prove admissions made by the plaintiff of an agreement made*

*by him with the defendant to accept a composition for the tithes of apples during particular years, and whether the defendant tendered the same.*

with the said defendant W. E., to accept from the said defendant any and what sum of money as or by way of composition for the tithes of apples growing in his orchards in the years — and — or either and which of those years? And if yea, Did or not the said defendant ever and when tender or offer to pay to the said complainant any and what sum or sums of money as or for such composition, and did or not the said complainant refuse to accept the same? Declare &c.

Lastly. [*The concluding general interrogatory; vide antea, p. 153.*]

*To prove how long witness has known the parish and the lands in question.*

Whether or no have you for many years and how long in particular known the parish of B. in the county of C. and certain lands there called C., situate within the township of C. in the said parish of B.? Declare &c.

*To prove that witness became entitled as farmer or lessee to receive all small tithes, or the moduses or customary payments in lieu of tithes, and how long he so continued entitled.*

Whether or no did you at any time and when and under whom and in what manner become entitled as farmer or lessee, or how otherwise, to have and receive the small or any and what tithes arising growing and renewing within the said parish of B. or any and what township thereof, and in particular within the said township of C., or to have or receive the moduses or customary payments made or rendered in lieu of tithes within the said parish or any and what township thereof, and in particular within the said township of C., and for how long did you continue entitled as such farmer lessee or otherwise to such tithes produce or customary payments? Declare &c.

*To prove that during the time he was the farmer or lessee he received no tithes for the lands in question, also to prove that he received the modus or customary payment in lieu of tithes, and at what period the same was payable.*

Whether or no during the time you were entitled as such farmer lessee or otherwise to the tithes moduses or customary payments in the former interrogatory inquired after, did you at any time or times and when receive any and what tithes and from whom for or in respect of the said lands called &c. or any and what part thereof, and if not why? And whether or no did you during such time or for any and what part thereof and from whom receive any and what modus or yearly customary payment or render for or in lieu of all or any and which of the tithes arising growing or renewing in and upon the said lands called C. or any and what part thereof, and at what period of the year was such modus or customary payment or render payable? Declare &c.

Whether or no at the time you commenced such farmer or lessee of the said tithes moduses or customary payments did you understand or were you informed by the person from whom you leased or farmed the same or from the agent or other person with whom you treated for the same, or from any other person or persons and whom, that the said lands called C. paid any and what modus or customary payment or render for or in lieu of all or any and which of the tithes arising growing and renewing thereon? And whether or no was any book or paper delivered to you by any person and whom as instructions for the collections of the said tithes or moduses or customary payments which were so leased to you; And did the said book or paper make any and what mention of any modus or customary payment for or in lieu of all or any and which of the tithes arising from the said lands called C., and what hath become of the said book or paper and when did you last see the same, and where; and did such book or paper appear to have been anciently written, or how otherwise? And what yearly rent did you pay as such farmer or lessee of the said tithes moduses or customary payments; and whether or no when you consented or agreed to pay such rent, did you consider that you were to be entitled as such farmer or lessee, to any and what tithes in kind from the said lands called C. or only to some and what modus or customary payment; and whether or no would you have agreed to give a larger rent as such farmer or lessee as aforesaid, if you had considered yourself to be entitled to the same tithes in kind from the same lands called C. as you had and received from the other lands in the parish of B.? Declare &c.

Whether or no during the time you were such farmer or lessee as aforesaid, were there any and what titheable matters and things arising growing and renewing in and upon the lands called C., and whether or no as you know or for any and what reason believe, did any person and whom and in what character and for whom ever and when have or take or demand during the time you were such farmer or lessee as aforesaid any and what tithes in kind from the said lands or any and what part thereof or any modus or customary payment in lieu thereof, other than yourself? Declare &c.

*To prove that at the time he became the farmer or lessee he was informed that the lands in question paid a modus in lieu of tithes; that a book was delivered to him as instructions for collecting the tithes or moduses, what has become thereof, and whether the same appeared to be an ancient book;*

*also to prove what rent he paid, and whether he would have given a larger rent if he had considered himself entitled to tithes in kind from the lands in question.*

*To prove that during the time he was farmer or lessee no other person took tithes in kind, or any modus in lieu thereof from the lands in question.*

*To prove the reputation that the lands are not titheable, and the quantity of acres the same consist of, and the boundaries thereof.*

Whether or no did you ever and when hear from any person or persons and whom in particular who is or are now dead, any thing respecting the said lands called C. being titheable or not titheable for the great or small tithes, or being subject or not subject to any and what modus or customary payment in lieu thereof? If yea, Set forth the particulars of what you have so heard; And whether or no can you tell what quantity or about what quantity of acres the said lands called C. consist of, and do you know the boundaries of the said lands or any part thereof? And if yea, Set forth the same to the best of your knowledge recollection and belief; Declare &c.

*To prove two receipts for the amount of the modus as exhibits, and the receipt by witness of the sums therein mentioned.*

Look upon the paper-writings now produced &c. Whether or no are or is such produced writings or either and which of them or any and what part thereof, or the name H. P. appearing to be set and subscribed thereto of your proper hand-writing; And whether or no did you duly receive the several sums therein respectively mentioned or any and which of them according to the purport and effect of the said paper-writings or either of them? Declare &c.

*To prove as exhibits the receipts signed by former lessees of the tithes for the amount of the modus payable for the lands in question.*

Look upon the paper-writings now produced &c. Whether or no are you by any and what means acquainted with the character or manner of hand-writing of — whose names appear to be set or subscribed thereto respectively, and are or is such produced writings or either and which of them or any and what part thereof, or the names — appearing to be set or subscribed thereto of the proper hand-writing of such persons respectively, or how otherwise? Whether or no were or was such persons respectively or either and which of them as you for any and what reason know and believe farmers or lessees of any and what tithes arising growing and renewing within the said parish of B. or any and what township thereof at the times such receipts respectively bear date? Declare &c.

*To prove notice given to the defendant of the plaintiff's claim to an estate, and whether the same was before or after the defendant had a charge thereon.*

\* Had or not the said defendant at any time or times and when in particular and how or in what manner and upon what occasion or occasions any and what notice or information given to him by or on behalf of the said complainant or any other person or persons and whom by name, or otherwise and how, that the said complainant had or claimed

to have some and what right title or interest in or to the premises in the pleadings of this cause mentioned? And if yea, Was such notice or information so given to the said defendant before or after and how long before or after he the said defendant had any and what lien charge or security upon the said premises, or how otherwise? Declare &c.

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\* Did you at any time and when and by whose authority make any and what offer to the said complainant relative to the subject-matter of this cause or any and what part thereof? And if yea, On whose behalf? Set forth all you know touching or concerning the matters inquired after by this interrogatory fully and at large.

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*To prove an offer made to the plaintiff.*

\* Are you or not acquainted with the several manors and other freehold hereditaments situate in the counties of — in the pleadings in this cause mentioned or any and which of them? Were you or not employed as the surveyor and agent for and on behalf of any and which of the said several parties in the preceding interrogatory inquired after in the partition of the said several manors and other hereditaments in the pleadings in this cause stated? If yea, When or at what time and by which of the said several parties were you so employed? And did you or not act as such surveyor or agent in the business of such partition, and are you or not acquainted with the several allotments made to the said parties respectively or any and which of them and to whom? And do you or not know a certain farm called W. farm in the pleadings in this cause mentioned? If yea, Where or in what parish or parishes is the same situate, and did or not the said farm called W. farm form part of any and which of the said allotments made in the partition of the aforesaid manors and other hereditaments and to whom was the same allotted? And do you or not know a certain piece or parcel of land situate in White Meadow, containing eleven acres or thereabouts, in the pleadings in this cause particularly mentioned? Was or not such piece or parcel of land ever and when and by whom shown to you as forming part of any and what farm

*To prove that witness was employed as surveyor on the partition of estates; his knowledge of the allotments and as to a particular farm in what allotment it was comprised; that a piece of land was shown to him as forming part of the farm, and was allotted therewith, and to whom.*

comprised in the aforesaid partition between the said several parties, and was or not the said piece or parcel of land situate in White Meadow included in the allotment of the said farm called W. farm or in any and what allotment on the partition of the aforesaid manors and other hereditaments, and to whom was the same allotted as you know or for any and what reason believe? Declare &c.

*To prove whether the allotments made upon the partition of certain estates were of equal value;*

*and that the allotment made to the plaintiffs comprised a particular piece of land as part of a farm, [which piece of land had been shown to the surveyor by mistake, as being part of the farm;]*

*also to prove whether the allotment made to the plaintiffs was of equal value with the other allotments.*

\* Were or not the several allotments of the said manors and other hereditaments made to the said parties respectively in the first interrogatory named on the partition thereof of equal value, or what was the difference in value between the said allotments respectively as you know or do for any and what reason believe? And did or not the allotment made to the said complainants comprise or contain a certain piece or parcel of land forming part of a certain meadow called White Meadow in the pleadings in this cause particularly mentioned as and for owelty or equality of partition, or why or for what reason was the said piece of land forming part of the said meadow called White Meadow comprised or included in the allotment made to the said complainants? And was or not the said piece of land forming part of the said meadow called White Meadow allotted unto the said complainants subject to tithes as part of and together with the said freehold farm called W. farm? And in particular was or not the allotment made to the said complainants of equal value with the several other allotments made of the said manors and other hereditaments as you know or do for any and what reason believe? Declare &c.

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*Interrogatories relating to partnership matters.*

Interrogatories to be administered &c. wherein S. W. is complainant, and T. F., H. J. F., R. F., S. G. F., M. F. and S. F. are defendants, on the part and behalf of the said complainant.

1st. [*General interrogatory as to knowledge of parties; vide antea, p. 152.*]

*To prove how long witness continued in the service of certain deceased persons, and*

2d. Whether or not did you ever and when first live and in what situation and at what age with J. F. and R. J. F. both late of &c. but now deceased in the pleadings of this



cause respectively named, and for how long did you continue with them and when did you quit them; and did you ever and when return to them and for how long did you afterwards remain with them and in what situation? Whether or no did the said J. F. ever and when and where and how often declare to you or in your hearing that the said R. J. F. was his partner in any and what trades or businesses, or make any declarations to such and what effect? Whether or no did you ever and when and how often by the directions of the said J. F. make out bills to customers of the said trades or businesses or any of them in the name of 'J. F. and company' and who was intended by the word 'company' as you know or collected and how from the said J. F.? And how many keys were there to the till of the shop in which the said businesses were carried on, and by whom were such keys respectively kept, and who had access thereto, and what and whose expenses were paid therefrom? What name or names was or were painted over the shop door in which the said business was carried on, or painted or engraved on the passage door of the house in which the said J. F. and R. J. F. lived, and by whom or by whose direction was or were such names or name painted or engraved, and who was or were intended thereby as you know or for any and what reason believe? Who appeared to act as masters or partners in the said trades or businesses, and who had access to all the books of the said trade and made entries therein and gave receipts for monies received and in what names? Whether or no did the said R. J. F. ever and when and how often in the presence or hearing of the said J. F. speak of himself as a partner in the said trades or businesses with the said J. F. or to such effect; and did or not the said J. F. upon such occasions deny or admit the same or how otherwise? What part did the said complainant take in the management of the family or of the said trades or businesses as you know or believe? Set forth the particulars &c.

3d. What is your trade or business and where do you live? Whether or no did you ever and when and for how long deal in any and what goods with J. F. and R. J. F. late of &c. but now deceased and in the pleadings of this cause named or either and which of them? In what name or names were your invoices or bills of parcels for such goods made out during the life of the said R. F. J. and after his

*when he left them, and whether he afterwards returned;*

*also as to any declarations which he may have heard made by J. F. that R. J. F. was his partner;*

*How witness made out the bills to customers,*

*how many keys there were to the till,*

*what names were painted over the shop door and house door,*

*who appeared to act as masters or partners, and who had access to the books;*

*also to prove that R. J. F. spoke of himself as being a partner in the hearing of J. F. and whether he denied or admitted the same, and what part the plaintiff had in the management of the business.*

*To examine tradesmen who dealt with the deceased as to the names in which the invoices were made out, and as to their knowledge or information that R. J. F. was a partner with J. F.*

death? Whether or no were or was any bills or bill of parcels ever returned to you by the said J. F. which had been made out in his name alone, and with any and what instructions as to making out the same in a different and what manner? Whether or no were you ever and when informed by or did you in any manner and how collect from the said J. F. that he had any and what partner in his said business; and whether or no did you know from the course of any dealing with the said J. F. and R. J. F. that they were partners together in the said business? Declare &c.

*To examine a banker with whom J. F. banked, as to declarations made by him respecting R. J. F. being in partnership with him.*

4th. Whether or no are you a partner in any and what banking-house or house of business? Whether or no did J. F. late of &c. but now deceased at any time when he was in — and when in particular open any cash account with you and in what name or names; and whether or no did he upon that or any other and what occasion or occasions make any and what declaration or declarations to you or to any person and whom in your hearing respecting his brother R. J. F. in the pleadings in this cause also named being in partnership with him in any and what trades or businesses? Set forth &c.

*To examine the banker's clerk to prove whether J. F. and R. J. F. both kept a cash account and in what name, and whether their drafts were honored, and the accounts with such drafts credited therein admitted by them.*

5th. Whether or no were you at any time and for how long employed in any and what situation in the late firm or banking-house of B. and company? Whether or no had J. F. and R. J. F. late of — but now both deceased and in the pleadings in this cause named or either and which of them any cash account with the said banking-house during such your situation therein, and what was the name or stile of such account; and did the said J. F. and R. J. F. or either and which of them draw in their own names upon such account and were such drafts honored, and were such accounts with such drafts credited therein afterwards admitted by them or either and which of them? Declare &c.

*To prove whether R. J. F. voted for a member of parliament, and whether he served any parochial office in the borough.*

6th. What is the right of voting for members of parliament at —? Whether or no did R. J. F. late of &c. ever and when vote for any member or members of parliament for the said borough and in what right and character; and whether or no did the said R. J. F. ever and when serve any and what parochial offices in the said borough? Set forth &c.

*To prove whether J. F. at the election, made any declarations respecting*

7th. Whether or no did J. F. in the pleadings of this cause named, upon the occasion of any and what election for a member or members of parliament for the borough of —

make any and what declaration and when respecting his brother R. J. F. in the pleadings of this cause named being a partner with him? Declare &c.

8th. Whether or no were you acquainted with J. F. and R. J. F. late of &c. but now deceased the testators in the pleadings of this cause respectively named or either and which of them, and how long before their respective deaths? Whether or no had you at any time and when any conversation or conversations with the said J. F. respecting the said complainant, or respecting any provision which he had made or intended to make for the said complainant, or which had been made for the said complainant by the said R. J. F.? If yea, Set forth all the particulars of such conversations, and when and upon what occasions the same passed according to the best of your knowledge remembrance information and belief and the truth declare.

9th. Whether or no were you at any time and when and where present when any conversation passed between R. J. F. and J. F. both late of &c. but now deceased respecting any provision made for the complainant S. W. by the will of R. J. F.? If yea, Set forth what was said both by the said R. J. F. and the said J. F. upon that occasion; And whether or no did the said R. J. F. then or at any other time and when deliver to the said J. F. his will or any paper which he described as his will? Set forth &c.

10th. Whether or no did J. F. and R. J. F. in the pleadings of this cause respectively named or either and which of them at any time and when purchase any and what sum in any and what stock and in whose names as a gift for the said complainant as you know or for any and what reason believe, and whether or no was the same at any time and when and upon what occasion and by whose advice after the death of the said R. J. F. transferred into the name of the said complainant as you know or for any and what reason believe? Whether or no did the said J. F. ever and when and upon what occasion make any and what declaration respecting his brother R. J. F. being a partner with him and respecting the share and interest which he had in the joint trade and property? Set forth &c.

11th. Whether or no were you present in the room with the said J. F. about two days before his death when the said J. F. made any declaration to the defendant H. J. F. and S. F. respecting the said complainant? If yea, Set

*R. J. F. being a partner with him.*

*To prove conversations with J. F. respecting the provision intended to be made for the plaintiff by him or by R. J. F.*

*To prove a conversation between R. J. F. and J. F. respecting the provision made for the plaintiff by the will of R. J. F., and whether he then delivered his will to J. F.*

*To prove a purchase of stock by J. F. and R. J. F. as a gift for the plaintiff, and that the same after the death of R. J. F. was transferred into the plaintiff's name; also to prove declarations by J. F. respecting R. J. F. being a partner with him, and his share in the business.*

*To prove a declaration made by J. F. two days before his death, respecting the plaintiff.*

*To prove whether witness ever attended any meeting of the defendants for the purpose of settling the share of H. J. F. and what the value thereof was admitted to be.*

forth the particulars of such declaration, and what was said thereupon by the said H. J. F. or S. F.? Declare &c.

12th. Whether or no did you on the part of the defendant H. J. F. ever and when attend any meeting of the said several defendants or any and which of them for the purpose of settling the share of the said H. J. F. in the said J. F.'s estate? If yea, Was the value of the said J. F.'s estate then stated to be or admitted by the said defendants or any and which of them to be of any and what amount in the whole? Declare &c.

13th. [*Interrogatory to prove exhibits in the hand-writing of J. F.*]

Lastly. [*The concluding general interrogatory; vide antea, p. 153.*]

*To prove a partnership deed as an exhibit.*

Look at the deed or writing now produced or shown to you at this the time of your examination marked with the letter (A), purporting to be articles of copartnership between the said W. G. and the said A. E. Whether or no was the same at or about any and what time or times signed sealed or delivered by any and what persons or person in your presence? Are you or not a subscribing witness to the signing sealing or delivering thereof by the said W. G. and the said A. E. or either and which of them? Of whose hand-writing is your name now appearing to be subscribed or indorsed as witness thereto? Declare &c.

*To prove entries in books of the dealings in trade by the person employed in the management of the business, and how the bills were made out, and also the receipts;*

Were you or not ever and when and for how long between the — day of — and the — day of — employed at — in the county of — in the conduct or management of any and what trade or trades carried on during such time or any and what part of such time in the name of the said W. G. and any other and what person or persons as his partner or partners? And if yea, Did you or not during such or any and what part of such time keep any and what book or books for the purpose of making entries of any and what kind respecting the dealings and transactions of such trade or trades or either of them? Look upon the books produced and shown to you at this the time of your examination marked respectively with the letters —; Were or not the several entries therein or in some and which of them or some and which of such entries made by

you? And if yea, When and upon what occasion and for what purpose did you make such entries respectively, and what do the same respectively purport to be? And did you or not during such time or any part of such time and when, make out or deliver any bill or bills to any person or persons and to whom, for goods sold during such time and when, from such trade or trades or some and which of them? And if yea, To whom was or were such person or persons charged to be indebted by the title of the said bill or bills; and did you or not during such time and when receive from any person or persons and whom any and what sum or sums of money for goods sold from the said trade or trades or some and which of them during such time? And if yea, For whom and for whose use did you by writing or otherwise and how acknowledge the same to be received; and was there or not during such time or some and what part of such time some written or painted inscription in or on the external part of the shop or warehouse in which the said trade or trades or some and which of them were carried on, denoting the name or names of the person or persons by whom or upon whose account the same were carried on? And if yea, Set forth what in particular was such writing or inscription in the very words thereof; Declare &c.

Look at the paper-writing now produced &c. purporting to be a proposal for or heads of articles of copartnership between —? Whether or no do you know or are you acquainted with the character or manner of hand-writing in which the same or any and what parts or part thereof are or is written? If yea, Set forth of whose hand-writing the same and every or any and what parts or part thereof is or are, and have you or not seen such persons or person write? Whether or no was the said paper-writing at any time and when and by whose direction sent or delivered to any person or persons and whom in order that regular articles of copartnership might be drawn pursuant thereto, or how otherwise? Whether or no did you for any time and when, and for how long and where, carry on any and what trade or trades in copartnership with the said T. E. upon the terms stipulated and expressed in the said paper-writing, or upon any and what terms and conditions? Look upon the printed newspapers now produced &c. entitled respectively —, and upon the advertisement in each of the said

*also to prove what names were written over the shop.*

*To prove as an exhibit a paper containing heads of articles of copartnership;*

*also to prove that the same were delivered to a solicitor to have regular articles of copartnership drawn, that the trade was carried on agreeably to the stipulations contained therein, and also to prove by whose direction certain advertisements were inserted in newspapers.*

newspapers marked —; When and for what purpose and by whose direction were the said several advertisements or some and which of them inserted in the said several newspapers, and were the same or any and which of them inserted with your knowledge or approbation? Declare &c.

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*To prove by the examination of a partner when the balance sheets of the copartnership accounts were made up, and whether the same were delivered to T. B. and why; also to prove whether witness considered T. B. entitled to any share of the profits of the brokerage business, and whether if he had demanded a share thereof the witness would have complied therewith.*

In what manner and at what periods were the balance sheets of the said accounts made up? Were or not such balance sheets from time to time delivered to the said T. B.? If yea, For what reason and for what purpose were such balance sheets made up and delivered to the said T. B.? Did you or did you not at any time and when during the continuance of the said partnership between the said G. P. and T. B. and yourself, consider the said T. B. entitled to any and what share and proportion of the profits of the said brokerage business? And if the said T. B. had demanded any share or proportion of such profits in the years when such business was profitable, should you or should you not have complied with such demand &c.? Set forth &c.

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*To prove the amount of capital advanced by a partner.*

\* Do you and by any and what means know whether the said A. B. advanced any and what sum or sums of money as and for his share of the capital of the said trade in the pleadings of this cause mentioned? And if yea, Set forth the several sums of money which he advanced for such purpose; And have you or not examined the said copartnership books? And if yea, What sum or sums of money does the said A. B. by the said books appear to have brought into the said trade? Declare &c.

*To prove a partnership business being increased.*

\* Do you or not know the nature and extent of the trade in the pleadings of this cause mentioned? If yea, What was the extent of the said trade at the time of the commencement of the said partnership between the said —, and was or not the said trade afterwards increased and by whom and to what extent and by what means? Declare &c.

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Whether or no had the said defendants R. and S. or either and which of them any acquaintance or connexion with R. C. who was sometime since your partner, before he became your partner; And whether or no did your dealings and transactions with the said defendants R. and S. depend upon the continuation of your partnership with the said R. C., or upon the personal confidence which the said defendants R. and S. reposed in you? Declare &c.

*To prove whether the defendants were acquainted or connected with R. C. the witness's late partner; and whether witness's dealings with the defendants depended upon the continuance of the partnership or upon the confidence reposed in the witness.*

Whether or no did you in the month of ——— command the packet boat in his Majesty's service called the ———, bound from F. to L.; and whether or no did you at any time in or about the said month of ——— make a voyage in the said packet from F. to L. and on what day did you sail from F. and on what day did you arrive at L.? Whether or no did the said complainant the Honorable Mr. M. sail with you as a passenger in the said packet on the said passage? And if yea, What name did the said complainant assume, and under what name did he pass upon the said voyage? Set forth &c.

*To prove that witness commanded a packet boat; that the plaintiff was a passenger on a particular voyage, and what name he assumed.*

Whether or no did you in the month of ——— see the complainant the Honorable Mr. M. at L.? If yea, When and where and upon what occasion did you first see him, and did any conversation then pass between you and the said complainant respecting the defendant S.? If yea, Set forth the particulars of conversation, and what was said thereon by the said complainant and by you respectively, according to the best of your knowledge remembrance and belief?

*To prove the particulars of a conversation between the plaintiff and witness respecting the defendant.*

Whether or no did you on the ——— day of ——— see the complainant the Honorable J. M. at L.? If yea, When and where and upon what occasion did you first see him, and what passed thereupon, and when and how soon afterwards did you next see him, and did the said complainant enter into any conversation with you, or make to you any declarations respecting the defendant S.? If yea, Set forth the particulars of such conversation or declarations according to the best of your knowledge remembrance and belief, and the truth declare.

*To prove the particulars of subsequent conversations, and the declarations made by the plaintiff respecting the defendant.*

*To prove letters as exhibits.*

Look upon the letters or paper-writings now produced &c. marked &c. Of whose hand-writing are the said several letters or paper-writings and every of them, or the superscriptions thereof and the signatures thereto, as you know or believe? And did you ever see the person or persons write whom you believe to have written superscribed or signed the same respectively, or by what means are you acquainted with the manner or character of the hand-writing of such person or persons? Set forth &c.

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*To prove the plaintiff's pedigree, and declarations of a deceased person respecting his nearest relations.*

\* Do you or not know whether the said J. N. the intestate deceased was ever married and when and to whom, and whether he left any and what legitimate children living at his death, or any legitimate grandchildren or grandchild, or any wife or any father or mother, brother or sister, brothers or sisters, or brother's or sister's children, uncles or aunts, or uncle's or aunt's children respectively living at the time of his death? And if any, Set forth whom by name particularly? And do you or not know whether the said complainants A. B. and C. D. or either and which of them were or was in any manner and how related to the said intestate J. N. deceased? And if yea, Set forth their or her or his degree of kindred, and how you make out the same; and if you at any time heard the said intestate J. N. make any and what declarations touching or concerning any persons in particular and whom by name, being his nearest relations of the whole or of the half blood; Set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief, with the reasons and circumstances to induce your belief fully and at large.

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*To prove how long the defendant has been in possession of certain copyhold premises.*

Do you know the copyhold premises situate &c. in the pleadings in this cause mentioned, and how long have you known the same? Did J. A. the defendant in the title to these interrogatories named at any time and when enter upon and possess the same and receive the rents and profits thereof? If yea, Set forth at what time he entered upon and possessed the same, and how long he hath continued in possession thereof and every part thereof? Declare &c.

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Whether or no were or was the said W. C. and S. his wife or either and which of them at any time and for how long in possession or in the receipt of the rents and profits of any messuages farms or lands in the parish of — commonly called —, and by whom are such messuages farms and lands now respectively occupied? And whether or no did the said S. C. continue in such possession or receipt until her death, or how otherwise? And whether or no did J. C. the son of the said W. and S. C. at any time and when enter into the possession or into the receipt of the rents and profits of the said messuages farms or lands, and whether or no did he continue in such possession or receipt until his death, or how otherwise? And whether or no did T. C. in the last interrogatory named, at any time and when enter into the possession or into the receipt of the rents and profits of the said messuages farms or lands? And whether or no did he continue in such possession or receipt, or how otherwise? Declare &c.

Whether or no was J. C. late of &c. commonly called — yeoman at any time and when in possession or in receipt of the rents and profits of the freehold and copyhold messuages lands and tenements which were subject to a mortgage which formerly belonged to the late A. M. clerk, and afterwards to the defendant M. M. and now to the defendant T. F., and whether or no did he continue in such possession or receipt until his death, and when did he die? Whether or no was the said J. C. ever and when married and to whom, and had he and did he leave any child or children, and whether or no did he die testate or intestate, and who upon his death entered upon such possession or receipt? And whether or no was T. C. late of &c. aforesaid at any time and when in the possession or in the receipt of the rents and profits of the said freehold and copyhold messuages lands and tenements, and whether or no did he continue in such possession or receipt until his death or how otherwise, and when did he die, and was he ever and when married and to whom, and had he and did he leave any child or children, and did he die testate or intestate? And whether or no was any and what allotment made to the said T. C. in respect of the said freehold and copyhold lands or any and what part thereof under any act of parliament passed for embanking the common salt-

*To prove that certain persons occupied certain farms until their death; that upon their death their son entered and continued in possession until his death; and that upon his death another person entered into possession.*

*To prove that a person was in possession of lands &c. until his death; that he died intestate and without issue;*

*Also to prove that another person had possession of the lands, &c. and whether he left any family;*

*Also to prove that an allotment of common land was made to him in respect of the same lands.*

marsh in the township of W. aforesaid, and for inclosing the same? Set forth &c.

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*To prove that a treasury messenger received monies due to another messenger, that he paid over the monies so received, and whether he was in the habit of taking receipts for the same.*

Whether or no did the said F. G. as you for any and what reason know or believe receive any monies from the Treasury or elsewhere and where on the account of the said A. B., and have you ever and in what years and how often seen the said F. G. pay any and what sums of money to the said A. B. in respect of the monies so received by him, and whether or no was it the practice of the said F. G. at such times to take receipts or memorandums for the monies so paid to the said A. B. or how otherwise, and whether or no was it as you for any and what reason know or believe the general habit of the said F. G. to be regular in his accounts and to take receipts or make memorandums of monies paid by him or how otherwise? Declare &c.

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*To prove the destruction of the records of fines levied during particular years;*

Whether or no are you the master or keeper of any and what office or place in which the records of fines suffered of estates or lands situate &c.? If yea, For how long have you acted or been employed therein, and are or not and have or not such records or any and which of them been for any and how long time in your custody or possession? Whether or no were any and which of such records and from and to what time in particular and when and about what time lost or in any and what manner destroyed? If yea, Have you or not any and what reason to know or believe what particular records or record of fines were or was upon such occasion lost or destroyed, and were or was or not any indentures or record of any fines or fine levied by any and what persons or person and whom by name of the message or tenement and premises hereinbefore mentioned and inquired after upon such or any and what occasion lost or destroyed as you know or for any and what reason believe? Declare &c.

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*also to prove the loss of the record of a fine levied of the premises in question.*

Whether or no did the said G. G. in the course of the dealings and transactions between him and the said T. D. frequently or how often for any and how long time receive from the said T. D. drafts or bills of exchange for money and to what amount yearly for the purpose of the said G. G. receiving the money payable thereby or for what other purpose; and whether or not also for the purpose of the said G. G.'s paying all or part of the money so received to any other person or persons on account of the said T. D.? Did it or not appear to you on drawing out the accounts between the said G. G. and T. D. that it was reasonable that any and what sum of money should be allowed by the said T. D. and on what ground unto the said G. G. or his representatives or estate as or by way of commission for receiving the money on or by virtue of such bills or drafts? Was or were or not any and what sum or sums of money charged in the accounts drawn out by you as aforesaid for such commission, and whether or not for postage of letters? Had you or not ever and when any discourse or conversation with the said T. D. with regard to his making any and what allowance to the estate or representative of the said G. G. for such commission and postage of letters or on either and which of such accounts? If yea, What answer did the said T. D. make or how did he express or declare himself relating to such matters or things or either and which of them? Declare &c.

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Hath or have or not any and what sum or sums of money been paid to or to the use of the said J. A. in the title to these interrogatories named by any tenant or tenants as the rent or rents of any and what part of the premises in the 5th interrogatory mentioned? If yea, Set forth for what and by whom by name, and what sum or sums hath or have been so paid? Declare &c.

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*To prove remittances of drafts and bills to an agent for the purpose of receiving the money due thereon; that it appeared reasonable to the person employed to make out the accounts between the parties that an allowance should be made for commission and postage of letters; also to prove what was said by the person charged therewith upon a conversation with him relative thereto.*

[Refer to p. 189, antea.]

*To prove what rents have been paid to the defendant by the tenants of the premises in question.*

Interrogatories to be exhibited to witnesses &c. [see p. 148, *antea*] wherein J. B. is complainant and R. B. is defendant, on the part and behalf of the said complainant.

1st. [*As to knowledge of the parties; vide p. 152, antea.*]

*To prove that witness advertised the premises for sale and sold the same by auction, what conversation witness had with the defendant the vendor as to the price at which the same should be sold; whether the lot was knocked down fairly and bonâ fide, and whether the defendant then made any objection thereto.*

2d. Whether or no did you or any person and who in partnership with you at any time and when and by whose order or authority cause the premises in the pleadings in this cause mentioned amongst others to be advertised for sale by auction, and whether or no did you or any person and who in partnership with you at any time and when and where and by whose order or authority put up the said premises to sale by public auction, and were the same described as lot 1. or as what other lot at the said auction? And whether or no did any and what conversation pass between you and the said defendant previously to the said lot being put up as to the price at which the same should be sold, and whether or no did the said defendant bid for the said lot and how much and to whom was the said lot knocked down and at what price? And was it so knocked down fairly and *bonâ fide* or how otherwise? And had the said defendant any time or opportunity to make a further bidding; and did the said defendant when the same was so knocked down publicly or otherwise and how object thereto, or when first did the said defendant object to the said sale? Set forth &c.

*To prove as an exhibit the memorandum or receipt signed by the auctioneer, what authority he had for signing the same, and the general usage of auctioneers as to signing receipts on the part of the vendors, and whether witness had received the deposit.*

3d. Look upon the paper-writing now produced &c.; Of whose hand-writing is the said paper-writing and every part thereof and in particular the signatures of "John White and Son" set and subscribed thereto; And whether or no had you authority from the said defendant to set and subscribe your name to such memorandum or receipt or to sign any agreement as to the sale of the said premises? And is it the usage for persons employed as auctioneers to sign such memorandum receipts or agreements on the part of the persons by whom they are employed to sell, and whether or no had you then actually received from the said complainant the said sum of £—— or for what reason did

you give a receipt for the said sum as if you had actually received it? Set forth &c.

4th. Look upon the paper-writing now produced &c.; Of whose hand-writing is the said agreement, and whether or no was the same signed by any person and whom in your presence? And is your name set and subscribed as a witness thereto of your proper hand-writing? Where was the said agreement written and signed, and was the said defendant then present, and did he make any and what objection thereto, and whether or no were you present when the sale of the said lot took place? And if yea, State what passed thereupon, and whether when the said lot was knocked down to the said complainant any and what objection was made thereto by the said defendant? Set forth &c.

Lastly. [*The concluding general interrogatory; see p. 153, antea.*]

*Opinion.*—The question in this cause is, whether any memorandum of the sale was signed by any person lawfully authorized by the defendant, and the only paper that can be stated to have that effect is the memorandum and receipt of the £—— mentioned in the bill to have been signed by one of the Whites.

The agreement signed by the plaintiff does not bear upon the difficulty of the case. If the evidence comes up to the representation of it, I think the plaintiff will succeed; but the case is not without doubt.

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Interrogatories to be exhibited to witnesses &c.  
[*see p. 148, antea.*]

1st. [*As to knowledge of the parties, see p. 152, antea.*]

2d. Whether or no were you employed on —— as auctioneer at the sale of a certain copyhold estate which had belonged to the late S. C. late of &c. inn-holder? If yea, In how many lots was the estate sold, and who was the purchaser at such sale of lots —— and ——, and at what prices? Look upon the printed paper now produced &c. marked with the letter (M); Whether or no is the same one of the copies of the particular and condition of the said

*To prove as an exhibit the agreement signed by the plaintiff, whether the defendant was present when the same was signed and objected thereto, and what passed at the time of sale.*

*To prove by the auctioneer in how many lots an estate was sold; also to prove as an exhibit a copy of the particulars of sale, the amount of half the auction-duty, and the value of fixtures and timber.*

sale, and were the said lots — and — purchased subject to such particular and condition? And if yea, What was the amount of half the auction duty on the said lots — and —, and what was the appraised value of the fixtures which were to be taken by the purchaser of lot —, and at what sum was the timber on lot — valued? Set forth &c.

*To prove conversations between the plaintiff and defendant as to whom the plaintiff was to consider as the purchaser of particular lots.*

3d. Whether or no were you at any time or times and when after — present at any conversation or conversations between the said complainant and the said defendant as to whom the said complainant was to consider as the purchaser of lots — and — part of the estate of the late S. C., being the premises in the pleadings in this cause mentioned? If yea, Set forth all and every the particulars of such conversation or conversations, and what was said therein both by the said complainant and the said defendant respectively, and when and where and in whose presence and hearing and upon what occasion or occasions all and every such conversation or conversations took place? Set forth &c.

*To prove delivery of possession by plaintiff to a Mr. K. and what passed thereat.*

4th. Whether or no were you present when the said complainant delivered to Mr. K. the possession of the premises in the pleadings in this cause mentioned? If yea, Set forth the particulars of what passed upon that occasion, and what was said thereupon by the said complainant to the said Mr. K.; Set forth &c.

*To prove application made by defendant to the plaintiff for time to pay the purchase-money, and whether the same was after possession was delivered to Mr. K.*

5th. Whether or no were you at any time present when the said defendant made any application or request to the said complainant to give him time to pay the purchase-money of the premises in the pleadings mentioned? If yea, Set forth the particulars of such application and request, and when the same was made, and whether or no after the said Mr. K. was in possession of the said premises; Set forth &c.

*To prove declaration by Mr. K. as to his having employed the defendant to purchase the premises for him.*

6th. Whether or no did you ever and when hear the said Mr. K. make any and what declaration and to whom as to his having or not employed the said defendant to purchase for him of the said complainant the premises in the pleadings in this cause mentioned? Set forth &c.

Lastly. [*The concluding general interrogatory, see p. 153, antea.*]

*Interrogatories to prove misrepresentation upon the sale of a copyhold estate as to the widow's right to free-bench.*

In Chancery.

Interrogatories to be administered &c. [see p. 148, *antea*] on the part and behalf of the complainant.

1st. [*As to knowledge of the parties; see p. 152, ante.*]

2d. Whether or no were you in and before the month of —, employed by the defendant Lord A. in any and what capacity as to the manor of K. in the county of S. and the messuages &c. of the said defendant in the parish of K.; and whether or no had you in and before the said month of — and when any and what instructions from the said defendant Lord A. or from any person or persons and whom as his agent or agents or on his behalf, to show the said manor and the said estates of the said Lord A. in the said parish to persons who should desire to view the same previously to the intended sale thereof, and whether or no had you then or at any other time and when any and what instructions from the said defendant Lord A. or from any person or persons and whom as his agent or agents, or on his behalf as to the customary rights of widows in the copyhold estates of the said manor of K., or as to the information that you were to give respecting such customary rights of widows to persons who should apply to view the said manor and estates previously to the said intended sale? Declare &c.

3d. Whether or no did the said complainant at any time and when apply to you as the agent of the defendant Lord A. to view the said manor and estates of K., and whether or no did the said complainant at any time and when make any and what inquiry of you as to the customary rights of widows in the copyhold estates of the said manor, and what information did you thereupon give to the said complainant with respect thereto? And whether or no did the said complainant make any and what inquiry of you as to the widowhood or the copyhold land within the said

*To prove by the agent who was employed by the defendant to show the estate, the instructions given to him with respect to the widow's right to free-bench, and the information he was to give to persons viewing the estate with regard to such right.*

*To prove what information was given to the plaintiff upon his application to view the estate, with regard to the widow's right to free-bench.*

manor of which one G. S. was tenant, and what answer did you give to such inquiry, and whether or no did you state that you had orders from any person and whom to take possession of the said land upon the death of any person and whom, and did you say any thing and what as to the state of health of such person? Set forth &c.

*To prove the death of the renewing life, and information thereof given to the plaintiff; application made to the tenant to deliver up possession, and his refusal; also to prove that the widow of the deceased is living, and the annual value of the land.*

4th. Whether or no did you know R. H. the renewing life in the copy of the said land of which the said G. S. was tenant, and when did the said R. H. die as you know or for any and what reason believe? Whether or no did you upon the death of the said R. H. and when give any and what information to the said complainant, and for what reason? And whether or no did you and when after the death of the said R. H. and by whose instruction and on whose behalf apply to the said G. S. to deliver up the possession of the said land, and for what reason did the said G. S. refuse to deliver up such possession? And is the widow of the said R. H. now living, and what is her age, and what is her state of health, and what is the annual value of the said land? Set forth &c.

*To prove what passed in the auction-room previously to the sale, with respect to the particulars of sale, and a proposal made to add another condition, and the particular declaration made previously to the sale with respect to a widow's right to free-bench.*

5th. Whether or no were you present at G.'s coffee-house in the city of L. on the —— day of —— at and before the sale of the manor and lands of L. in the pleadings in this cause mentioned? Whether or no was it proposed by any person and whom and on whose part to add any and what condition to the particulars of sale with respect to any life upon the said estates which might drop before the completion of the purchase, and what passed thereupon and between whom, and what was settled and declared and by whom with respect thereto; and whether or no was there at or previously to the said sale any declaration made and by whom "that it was to be understood by all persons who chose to bid for the estate, that the sale should proceed in the manner most disadvantageous to the interest of the seller with respect to a widow's right," or to any such and what effect? Set forth &c.

*To prove what observations were made by the auctioneer previously to the biddings as to the custom of the manor with respect to widowhood, the inquiry made by*

6th. Whether or no did the auctioneer previously to the biddings at the said sale make any and what observations as to the custom of the said manor of K. with respect to widowhood and what passed thereupon; And whether or no did the said complainant then make any and what inquiry and of whom as to such right of widowhood, and any and what inquiry as to the widowhood, or any and



what particular parcel of land within the said manor, and what answers did the said complainant receive to such inquiries and from whom, and what declarations were thereupon made and by whom as to the customary rights of widows within the said manors or as to the right of widowhood in any and what particular parcels of land within the said manor, and whether or no did any person and whom and by whose direction, write any thing and what upon one of the printed particulars of sale against any and what parcel of land described therein? And did any person and who afterwards deliver to you and in what character and for what reason the said printed particular of sale which was so written upon? Look upon the paper now produced by or to you at this the time of your examination marked with the letter (A); Whether or no is the said produced paper the printed particular which was so written upon and delivered to you as aforesaid, and of whose hand-writing are the following written words in the said produced paper, 'The widowhood has been enjoyed,' as you know or for any and what reason believe? Set forth &c.

7th. Look upon the paper now produced to you at this the time of your examination marked with the letter (A); Of whose hand-writing are the following written words in such paper, 'The widowhood has been enjoyed,' as you know or believe? And have you seen such person write, or by what other means are you acquainted with his character and manner of hand-writing? Declare &c.

8th. [*To prove copies of entries on the court rolls; see the 4th interrogatory inserted in p. 197, antea.*]

9th. *To prove the custom of the manor as to the widow's right to free-bench; see the 1st interrogatory inserted in p. 178, antea.*]

Lastly. [*The concluding general interrogatory; see p. 153, antea.*]

*the plaintiff as to such right in particular parcels of land, and the answers received in reply;*

*also to prove what was written on one of the particulars of sale, and by whom, and the delivery thereof to witness;*

*also to prove the same particular as an exhibit, and the hand-writing of certain words therein.*

*To prove the hand-writing of particular words contained in an exhibit.*

## In Chancery.

Interrogatories to be administered to witnesses &c. [see p. 148, *antea*] wherein J. D. is complainant and I. D. and T. R. C. are defendants, on the part and behalf of the said complainant.

1st. [*As to knowledge of the parties; see p. 152, ante.*]

2d. [*To prove as an exhibit the agreement signed by the defendant I. D. with the plaintiff; see the first interrogatory inserted in p. 190, ante.*]

*To prove as an exhibit a letter written by one of the defendants.*

3d. Look upon the letter or paper-writing now produced and shown to you at this the time of your examination marked with the letter (B), and the superscription or direction thereof; Whether or no are you by any and what means acquainted with the character and manner of hand-writing of the said defendant I. D., and whether or no is the body of the said letter or paper-writing and the name I. D. appearing to be set and subscribed thereto and the superscription or direction of the said letter or either and which of them of the proper hand-writing of the said defendant I. D. as you know or believe? Declare &c.

4th. [*To prove the particulars of a conversation between the plaintiff and one of the defendants, and an offer made by the plaintiff to pay part of the consideration money; see the 3d interrogatory inserted in p. 168, ante.*]

*To prove by the examination of the solicitors employed in negotiating the treaty between the defendants, by whom they were employed, that they received directions from the defendant T. R. C., and that pending the treaty or before the purchase-money was paid they received an intimation that the plaintiff and I. D. had entered*

5th. Whether or no did you at any time and when treat with or enter into any agreement with the said defendant I. D. for the sale by him of the — public-house at E. in the pleadings of this cause mentioned, to the defendant T. R. C.? If yea, When and by whom were you employed to enter into such treaty and agreement, and when and from whom respectively did you receive all and every your instructions or directions as to such treaty or agreement? And in particular did you ever and when receive any instructions or directions respecting such agreement from D. W. and W. H. the partners of the said defendant T. R. C. or either and which of them? And whether or no pending such treaty, or after the said agreement was concluded, and before the purchase-money was paid by the said defendant T. R. C.

pursuant to such agreement, did you know or believe or had you any intimation that the agreement in the pleadings in this cause set forth or any agreement had been entered into between the said complainant and the said defendant I. D. as to the sale of the said public-house called the — by the said I. D. to the said complainant, and when and from whom and upon what grounds did you know or believe the same, or when and from whom did you receive such intimation? And did you at any time and when before the said agreement was concluded or before the said purchase-money was paid by the said defendant T. R. C., inform the said defendant of such your knowledge or belief, or of such intimation, and if not, why? Set forth &c.

6th. Whether or no did you ever and when treat or agree with the defendant I. D. for the sale by him of the — public-house at E. in the pleadings of this cause mentioned, to the defendant T. R. C., or employ any person or persons and whom in any such treaty or agreement, or did you ever and when and to whom give any and what instructions or directions as to such treaty or agreement? And whether or no did you so treat or agree with the said defendant I. D. or so employ such person or persons in such treaty or agreement, or give such instructions or directions as to such treaty or agreement by the previous authority of the said T. R. C., or with his privity or approbation; or did he after you had so treated or agreed, or so employed such person or persons, or given such directions or instructions, know and approve of the same, or how otherwise? And whether or no pending the treaty with the said defendant I. D. for the sale of the said public-house to the said defendant T. R. C. or after the agreement for such sale was concluded, and before the purchase-money was paid by the said T. R. C. pursuant to such agreement &c. [*the same as the concluding part of the former interrogatory*] Set forth &c.

7th. Whether or no did you on any day and when in particular in or about the month of — dine in company with the said complainant at the public-house at B.? And whether or no did the said complainant then say to you or to any other person and whom in your presence or hearing, that he had made any agreement for the purchase of the public-house called the — at E. in which he lived, or to any such and what effect? And whether or no was

*into an agreement, and whether they informed T. R. C. of it.*

*To prove by the examination of the partners of the defendant T. R. C. whether they entered into or employed other persons and whom to enter into a treaty with the defendant I. D. for sale of the premises, whether they had the previous authority of T. R. C. or whether he afterwards knew or approved of it.*

*To prove that at a dinner the plaintiff informed one of the partners of T. R. C. that he had agreed for the purchase of the premises, and whether the agreement between the defendants was then concluded or the*

*purchase money paid, and whether witness informed T. R. C. of what he had heard.*

the agreement between the defendants I. D. and T. R. C. as to the sale of the said house then concluded, or had the said T. R. C. then paid his purchase-money for the said house to the said I. D. as you know or believe? And whether or no did you mention or give any intimation to the said T. R. C. of what the said complainant had then said before the said agreement was concluded between the said defendants I. D. and T. R. C., or before the said purchase-money was paid by the said T. R. C., and if not why? Set forth &c.

*To prove by the examination of one of the partners of T. R. C. that he frequently called at the plaintiff's house to look at his agreement, that he took the same away and how long he kept it, and what passed when he returned the same;*

*Also to prove whether when he first had any conversation with the plaintiff respecting his agreement or took the same away, the agreement between the defendants had been entered into or concluded, or the purchase-money paid.*

8th. Whether or no did you ever and when and how often and at what particular times in or about the month of —, and whether alone or in company with any other person and whom, call at the house of the said complainant and ask to look at the agreement which he had entered into for the purchase of his house, or to any such and what effect? Or have you had any other and what conversation with the said complainant respecting any such agreement? And whether or no did you or any other person and who in your presence at any and which of such times see the said agreement? And whether or no did you or any other person and who in your presence, at any and which of such times desire to take the said agreement away and allege any and what reason for so doing, or actually take the said agreement away and allege any and what reason for so doing? And for how long did you or such other person keep such agreement, and for what reason? And when did you or such other person return the same to the said complainant? And whether or no did you or such other person when the said agreement was so returned to the said complainant, make any and what declaration as to the value that the said agreement would be of to the said complainant if he knew how to use the same, or to any such or any other and what effect? And whether or no when you first called at the house of the said complainant as aforesaid, and had any conversation with the said complainant respecting any such agreement as aforesaid, or when you or such other person took away such agreement as aforesaid, had the treaty for the purchase of the said public-house called the — by the said defendant T. R. C. been entered into with the said defendant I. D.? Or if entered into, had the same been concluded, or if concluded, had the purchase-money for the said house been paid by

the said T. R. C. as you know or believe? Set forth the particulars at large according to the best of your knowledge remembrance and belief, and the truth declare.

Lastly. [*The concluding general interrogatory; see p. 153, antea.*]

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Interrogatories to be exhibited &c. [*see p. 148, antea.*]

1st. [*As to knowledge of the parties; vide p. 152, antea.*]

2d. Did you know N. L. in the pleadings named the said complainant's late grandfather deceased in his life-time and for how long before his death, and when or about what time did he die? Declare &c.

*As to witness's knowledge of N. L. deceased.*

3d. Whether or no do you know and have you or not at any and how long time known or been acquainted with a messuage or tenement and premises situate &c. now called or known by the name of &c. and heretofore or formerly called or known by the name of &c. and late or heretofore the estate of the said N. L.? Declare &c.

*As to witness's knowledge of the premises in question.*

4th. Whether or no did the said N. L. ever and when in his life-time sell or dispose of the messuage or tenement and premises in the 3d interrogatory mentioned or inquired after to the said defendants or any and which of them, or to any and what other persons or person and whom by name, and for what sums or sum of money or for any other and what consideration; and were or was or not the same or any and what part thereof by any and what deeds or deed or otherwise and how conveyed and by whom, and particularly whether or not by the said N. L., to such purchasers or purchaser or any and which of them? Had, or not such persons or person purchasers or purchaser or any and which of them at any and what time before or at the time of making such purchase or of the execution of the conveyance of the said premises or of the payment of the whole or any and what part of the purchase-money or consideration for the same, and by what means any and what knowledge notice or information that the title of the said N. L. to the said messuage or tenement and premises or any and what part thereof was defective, or that he had not full power or authority to sell or dispose of the same or of the inheritance thereof, or that any and what other person and

*To prove that N. L. sold the premises in question to the defendants and executed conveyances thereof to them;*

*and that the defendants had previously thereto notice that N. L.'s title was defective and that some person claimed title to the same premises.*

*To prove that the purchasers of the premises in question had notice of the plaintiff's claim thereto previously to the time of purchase or payment of the consideration-money.*

*To prove that the purchase-money was less than the full value of the premises, and that an allowance was made thereout on account of the defective title.*

*To prove declarations by, and conversations with the defendants relative to their title to the premises.*

who by name had any right title claim or interest thereto or therein or to or in any and what part thereof as you know or for any and what reason believe? Declare &c.

5th. Whether or no had the purchaser or purchasers of the said message or tenement and premises in the said 3d interrogatory mentioned or inquired after or any or either and which of them at any and what time before or at the time of making such purchase or executing the conveyance of the said premises or of the payment of the whole or any and what part of the purchase-money for the same and by what means any and what knowledge notice or information that the complainant had any and what right title claim or interest thereto or therein or to or in any and what part thereof? Declare &c.

6th. Whether or no was the price or the sum of money paid by the said purchasers or purchaser of the said message or tenement and premises as in the said preceding interrogatory is mentioned and inquired after the full or utmost price or value thereof, or was or not the same and for what reason less and by how much less than the full value thereof in case a good title could have been made thereto to such purchasers or purchaser? Were or not the same premises purchased for some and what sum of money less than the real and full value thereof on account of some and what defect in the title of the vendors or vendor thereof and whom by name in the title thereto or therein, or was or not some and what deduction or allowance made out of the purchase-money for the same or such or some and what other account? Declare &c.

7th. Whether or no did you ever and when on any and what occasion hear the said defendants or any and which of them say or declare any thing and what touching or concerning their or any and which of their right or title to the aforesaid message or tenement and premises or any and what part thereof or any defect therein, or touching or concerning the right title interest or claim of any and what other persons or person and whom by name thereto or therein? Set forth all and every the particulars and when and where and before whom or in whose presence or hearing and upon what occasion the same or any of them were or was made; Had you or not ever and when any and what conversation with the said defendants or any and which of them touching

their or any and which of their right or title to the aforesaid premises or any and what part thereof? Declare &c.

Lastly. [*The concluding general interrogatory; vide antea, p. 153.*]

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Whether or no were you at any time or times and when previously to the agreement between the said complainant and the said defendant respecting the purchase by the said defendant of the house and premises of the said complainant at — present at any conversation or conversations which passed between the said complainant and the said defendant upon the treaty for the said purchase? If yea, Set forth the particulars of such conversations and what was said therein by the said complainant to the said defendant respecting his title to the said premises; and whether any thing and what was said by the said complainant to the said defendant as to the title to the newly-inclosed ground in front of the said premises; Set forth all and every the matters and things aforesaid according to the best of your knowledge remembrance information and belief.

Whether or no at any time and when after the agreement between the said complainant and the said defendant respecting the said purchase, did the said defendant desire you to communicate to the said complainant any proposal on his part as to his being released from the said agreement? If yea, Set forth the particulars of such proposal, and when and upon what occasion the said defendant made the same; Set forth &c.

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Whether or no had you at any time and when previously to the making of the agreement of the — day of — in the pleadings in this cause stated, and upon what occasion any and what communication with the said complainant as to the title of the said defendant to the premises comprised in the said agreement? And did the said complainant at any time and when and upon what occasion previously to the making of the aforesaid agreement, state to the said defendant or to you or to any other person and whom as the solicitor or agent of the said defendant that there existed any and what objections to the title of the said de-

*To prove the particulars of a conversation between the plaintiff and defendant respecting the title of the plaintiff to a house and ground previously to the agreement entered into for purchase.*

*To prove a proposal made by the defendant to be released from his contract for purchase.*

*To prove that previously to the agreement for purchase witness communicated with the plaintiff as to the defendant's title, and that the plaintiff stated that there existed objections to the title by reason that certain persons claimed an interest in the premises;*

*also to prove what was the plaintiff's object in making such objections.*

defendant to the said premises, and in particular any and what objections by reason that one R. B. had not joined in the conveyance of the said premises to the said defendant, or any and what objections by reason that one A. S. claimed to have some right or interest in the said premises, and for what purpose did the said complainant state the said objections to the title of the said defendant to the premises, and had the said objections any and what effect as to the price which the said defendant agreed to accept from the said complainant for the said premises? Declare &c.

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*To prove that the defendant has sold part of the premises in question and at what price.*

Did or not J. A. the defendant in the title to these interrogatories named, at any and what time sell to any and what person or persons by name any and what part of the premises in the last interrogatory mentioned? If yea, Set forth for what price, and what sum or sums of money the said defendant received as the consideration thereof; Declare &c.

*To prove that witness as auctioneer sold an estate, and the plan produced at the time of sale.*

\* Did you at any time and when act as an auctioneer and put up to sale by auction the estate in the pleadings in this cause mentioned, and was or not the said estate sold in lots, and did you or not at the time of such sale and before the putting up of any of the lots produce some and what plan or particular of the said estate, and did you at or before the said sale make any and what declaration concerning the lots so to be put up to sale or concerning the plan or particular of the said estate? Declare &c.

*To prove that witness was employed as auctioneer to sell an estate and that he prepared the plan thereof referred to in the advertisements, and that the same was left open to the inspection of persons desirous to purchase.*

\* Were you at any time and when and by whom and on whose behalf employed to sell by public auction or otherwise, a certain freehold estate situate &c. in the pleadings of this cause mentioned? If yea, Did you prepare or cause to be prepared any plan or particular of the said estate, or was any plan or particular of the said estate prepared? If yea, Where was such plan or particular left, and was the same open for the inspection of persons who might be desirous of buying the said estate or any part thereof? And was the sale of the said estate advertised, and was any and what plan or particular referred to in such advertisement, and were or not the respective lots marked or described in such plan or particular? Declare &c.

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\* Did you know J. O. late of — deceased, in his life-time, and for any and what length of time previously to his decease? Was he or not at any time in the service or employ of the said Bristol Dock Company? If yea, In what station or capacity and for what length of time was he so employed by the said Bristol Dock Company? Declare &c.

Whether or no have you now and have you for any and what time had any and what situation or office, situations or offices in or about his Majesty's Treasury, or connected with the business thereof, and whether or no have you by means of such office or situation, or by any other and what means had any opportunity to become acquainted, and are you in any and what degree acquainted with the duties employment and profits of the Treasury messengers? Declare &c.

Whether or no were you intimately or otherwise and how acquainted with F. G. and A. B. who were lately two of the said Treasury messengers but are now deceased, and for how long did you severally know them, and what was the situation of the said A. B. before he was appointed a Treasury messenger, and was he before such appointment a person of property, or reputed to be a person of property, or how otherwise? Declare &c.

Whether or no had you any and what relation or connection who was a Treasury messenger at the same time with the said F. G.? And if yea, Did the said F. G. receive the monies which were due to such your relation or connection in his employ of messenger, in the same manner as he received the monies due to the said A. B., and did the said F. G. from time to time pay over to such your relation or connection the monies which he received from him, or what was the state of the accounts between them at the death of the said F. G.? Declare &c.

*To prove that a deceased person was in the defendant's service, and in what capacity.*

*To prove what situation witness holds in his Majesty's Treasury, and his knowledge of the duties and profits of the treasury messengers.*

*To prove what situation a person held before he was appointed a treasury messenger, and whether he was reputed to be a man of property.*

*To prove that witness had a relation who was employed as a treasury messenger, that another messenger received the monies due to him, and what was the state of accounts between them at the decease of such person.*

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\* Whether or no did you know or were you acquainted with S. D. of —, deceased (in the pleadings of this cause named) in his life-time? If yea, When and where did he die? And for how long time did you know him or were you acquainted with him before the time of his death?

*To prove the death of a person, and when first, and how long witness was acquainted with him, when first, and in what ca-*

*capacity witness lived with him, and the circumstances and situation in life of the deceased during the respective periods that witness was acquainted with him, and lived in his service.*

And when and where did you first know or become acquainted with him, and for how long time or to what time did you continue acquainted with him? Did you or did you not live or reside with the said S. D. in his life-time? If yea, When and where and for how long time and in what rank station or capacity did you live or reside with or serve the said S. D. in his life-time? And in what circumstances and situation in life at the time when you first knew or became acquainted with the said S. D. and from time to time during the time that you knew or were acquainted with him, was the said S. D., and in what circumstances and situation in life at the time when you first lived or resided with or served the said S. D. and from time to time during the time you lived or resided with or served him was the said S. D.? Declare according to the best of your knowledge remembrance and belief, together with the grounds or reasons on which your belief is founded.

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*To prove within what parish two pieces of land are situate, or reputed to be situate, and to what parish the poor's rates or tithes have been paid.*

Whether or no do you know and for how long have you known two pieces of land called the forty acres, which are now in the occupation of R. B. of the said parish of W. farmer? If yea, Within what parish are the said pieces of land situate as you know or for any and what reason or reasons believe, and whether or no have you ever and when heard from any person or persons and whom who are now dead within what parish the said two pieces of land are situate? And whether or no do you know to what parish the poor's rates or tithes have been paid for the said two pieces of land, and when and by whom and to whom? Declare &c.

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*To prove a survey made of an estate, and of what number of acres it consists.*

Whether or no did you ever and when and by whose employment make a survey and admeasurement of certain lands called the S. situate in the parish of C. in the county of —? If yea, Of what number of acres do the said lands consist? Declare &c.

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Whether or no did the said defendants or either and which of them, or any and what person or persons on their or either and which of their behalf, at any times or time and when, or about what times or time particularly, and whether before or after the — day of —, tender or offer to pay or satisfy unto any and what persons or person any and what sums or sum of money in or towards discharging any and what legacies or legacy given by the will of —? Were or was or not any and what securities or security, and from and to whom, for payment of any and what sums or sum of money, produced and by whom at all or any and which of such times? Did the persons to whom such, if any, tender was offered or made at any or either and which of such times agree or refuse to accept the money or other satisfaction so offered, and how and in what manner did he she or they at such time or times express or declare him or herself or themselves relating thereto? Declare &c.

*To prove a tender of money or of securities in payment or discharge of legacies, and whether the same was accepted or refused, and what passed relative thereto.*

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Interrogatories to be exhibited &c. [see p. 149, *antea*] wherein D. C. is complainant and T. W. and L. W. are defendants, on the part of the said complainant.

1st. Do you know the parties complainant and defendants in the title of these interrogatories named, or any or either and which of them, and how long have you known them respectively? And do you know the vicarage and parish of C. in the county of W. and chapelry of L. N. in the same county? Is or is not the said chapelry annexed to the said vicarage or parish, or is the same reputed so to be, and how long time hath the same been or been reputed so to have been? Declare &c.

*To prove a knowledge of the parties and of the vicarage and chapelry, and that the latter is annexed or reputed to be annexed to the vicarage.*

2d. [To prove the institution and induction of the plaintiff; see the 2d interrogatory in p. 220, *antea*.]

3d. Who is or are reputed to be rector or rectors of the said parish of C. and of the said chapelry of N. L.? Who is or are or who is or are reputed to be entitled to the tithes of all kinds of titheable matters and things other than corn grain and hay arising from lands within the said parish or chapelry, or the satisfaction for the same, whe-

*To prove who is rector of the parish, and who is entitled to the tithes arising within the parish or chapelry except of corn, grain, and hay.*

ther the rector or the vicar of the said parish &c.? Have the tithes of all or any and which of the several kinds of titheable matters and things other than corn grain or hay been from time to time delivered to one or which of them the vicar or rector aforesaid, or to whom in particular hath satisfaction for the same been from time to time paid, or is it reputed that such tithes have been delivered or that such satisfaction hath been made? Declare &c.

*To prove the particulars of the lands in the occupation of the defendants, by some person resident within the vicarage or near thereto.*

4th. Whether or no have you for any and how long time lived within or near and how near to the said vicarage or parish of C. or the said chapelry of N. L.? Have or hath not the defendants or any or either and which of them during all or any and what part of the time since the month of —, occupied any and what lands situate or lying within the said vicarage or parish of C. or the said chapelry of N. L. and which of them in particular? Have you or not for any and how long time known all or any and which of such lands? If yea, Set forth and describe the particulars thereof so occupied by each of them; Declare &c.

*To prove whether tithes are payable in kind of all titheable matters except corn, grain, and hay, or a composition in lieu thereof.*

5th. Whether are the tithes payable in kind or reputed to be payable in kind of or for all or any and what kinds of titheable matters and things other than corn grain and hay arising on and from all or any and which of the lands in the occupation of the defendants T.W. and L.W. or either and which of them within the said parish of C. or the said chapelry of N. L., or is or are any and what certain or other sum or sums of money payable or reputed to be payable by the owners or occupiers of all or any and which of such lands, and when and to whom and in what manner, for or in lieu of the tithes of all or any and what kinds of titheable matters and things arising on or from all or any and which of such lands? If any such sum or sums of money is or are so payable or reputed to be payable for or in lieu of the tithes of all or any titheable matters or things arising on or from all or any and which of such lands, how long hath or have the same or is it reputed that the same hath or have been payable? Have you or not &c.

*To prove what yearly sums have been paid by the occupier of the defendant's lands or any of them in lieu of tithes, except of*

6th. Whether or no hath or have any and what yearly or other sum or sums of money been constantly or otherwise and how from time to time paid by the owner or occupier of all or any and which of the lands in the occupation of the defendants T. W. and L. W. or either and which

of them situate or lying within the said parish or chapelry and to whom and for whose use and for how long time for or in lieu of the tithes of or for any and what kinds of the titheable matters and things other than corn grain and hay which have arisen on or from all or any and which of such lands? If yea, Under what name or names denomination or denominations hath or have each and every or any or either and which of such payments been from time to time made and accepted and in general considered as made and accepted, whether as an ancient established certain and invariable modus or moduses and as being due and having been payable from time whereof the memory of man is not to the contrary and as the full and whole of what the vicar of the said parish was by any means entitled to for or in lieu of the tithes of such titheable matters and things respectively arising on such lands respectively or as temporary compositions only or under particular agreements from time to time made with the vicar of the said parish for the time being? Have or not tithes been delivered or is it reputed in the said parish or chapelry or the neighbourhood thereof that tithes have been delivered in kind and how often and when and about what times or time and by whom and to whom and from whom of or for all or any and what kinds of titheable matters and things other than corn grain and hay, which arose on or from all or any and which of such lands? Have or not the sums or sum of money which have or hath been from time to time paid for or in lieu of the tithes of all or any and which of such matters or things other than corn grain and hay arising on or from all or any and which of such lands been at any and what time or times and how often and in what manner and on what occasion altered or varied? Have you or not &c.

7th. Whether or no are the whole or any and what parts of the lands lying within the said chapelry of N. L. commonly called oxgangs of lands divided into oxgangs, or estimated with respect to their quantity as being any particular number of oxgangs, or is the term "oxgang" otherwise and how made use of or applied to all or any and which of such lands? Whether are the tithes payable in kind or reputed to be payable in kind of or for all or any and what kinds of the titheable matters and things other than corn grain and hay arising on or from all or any and which of the lands lying within

*corn, grain, and hay, and under what names made and accepted, and whether as moduses or as temporary compositions only;*

*also to prove the general reputation as to whether tithes have been rendered in kind and of what titheable matters except as above,*

*and whether the sums paid in lieu of tithes except as above have or not varied.*

*To prove whether the whole or what parts of the lands within the chapelry is or are divided into oxgangs, or to what lands such term is applied;*

*also to prove whether tithes are payable in kind or reputed so to be of all titheable matters except corn*

*grain and hay arising from the lands called or estimated by the number of oxgangs.*

*To prove what yearly sums have been paid by the owners of all lands called or estimated by the number of oxgangs.*

the chapelry of N. L. which are commonly called oxgangs, and which are generally estimated by the number of oxgangs or to which the term "oxgang" is generally applied, or is or are any and what certain or other sums or sum of money &c. [*take the 5th interrogatory from these words to the end.*]

8th. Whether or no hath or have any and what yearly or other sum or sums of money after any and what particular rate per oxgang or by any and what other particular quantity or how otherwise, been constantly or otherwise and how from time to time paid by the owners of all or any part of the lands in the said chapelry of N. L. which are commonly called oxgangs, or which are generally estimated by the number of oxgangs, or to which the term "oxgang" is generally applied, and to whom or for whose use, &c. [*take the 6th interrogatory from these words to the end.*]

*To prove that the tithes of certain tithable matters have been rendered to the vicar as small tithes, and any instances of the same, and the general reputation relative thereto.*

\* Do you know any thing concerning the tithes of the said parish of O. or of any of the parts or places therein and which of them, and particularly concerning the tithes of turnip seeds clover seeds and grass seeds arising growing renewing and increasing within the said parish or any of the parts or places thereof, and what do you know concerning the same? And do you know or remember any and what instances of the tithes of turnip seeds clover seeds and grass seeds having been taken or received by or rendered to the vicar of the said parish for the time being and whom by name as small or vicarial tithes or in any other and what right, and when and by whom were such tithes paid or rendered? And were or not such tithes generally esteemed and considered in and throughout the said parish to belong to and be the right of the vicar of the said parish for the time being? Declare &c.

*To prove the custom in the parish as to certain tithes, and whether rendered as great or small tithes, and any instances of either kind.*

\* What is or has been the usage or custom in the said parish with respect to the tithes of turnip seeds clover seeds and grass seeds and to whom have the same or any and which of them been rendered, and whether to the vicar or rector of the said parish or to any and what other person or persons, and whether as a great or rectorial or as a small

or vicarial tithe or how otherwise, and what instances do you know of either and which of them? Declare &c.

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\* Did you at any time and when by the order and direction of the said defendant give to the said complainant any and what notice of the time of the said defendant's digging up any potatoes in the said parish of B. during the years —? And if yea, Set forth when and to whom you gave such notice; Did or not the said complainant attend the digging up of such potatoes or take away the tithe thereof or why did he not take away such tithe? Declare &c.

*To prove notice given to the plaintiff of the time of digging up certain titheable articles, and whether he attended and took away his tithe thereof.*

\* Do you or not know of any and what tithe having been set out by or by the order of the said defendants in the parish of B. in the pleadings of this cause mentioned in and during the years —? And if yea, Set forth what particular articles or species of tithe were or was set out for the said complainant by the said defendant in the said parish of B. during the said years — as you know or believe? And did or not the said complainant remove receive and take away all or which of the articles so set out for tithe, or did he refuse to take or did he leave any and which of them, and were such tithes fairly set out, or how otherwise? Declare &c.

*To prove tithes having been set out for the plaintiff, and whether he removed or refused to take the same away.*

\* Did you at any time and when for and on behalf of the defendant or by his order or direction make any tenders or tender to the said complainant of any and what sum of money for or on account of any and what tithe in the parish of B. during the years —? If yea, Set forth what sum of money you so tendered at such time or times respectively, and on what account, and did or not the said plaintiff accept such tender? Declare &c.

*To prove a tender made to the plaintiff on behalf of the defendant in respect of certain tithes.*

\* Did you at any time and when pay to the said complainant for or on behalf of the said defendant or by his order and direction any and what sum of money for or in lieu or in respect of any and what tithes accruing due in the said parish of B. during the years — or one and which of them? If yea, Set forth what sum or sums of you so paid and when and on what particular account.

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*To prove payment to the plaintiff on behalf of the defendant in respect of certain tithes.*

*To prove payment in respect of the defendant's tithes,*

*and also applications made on his behalf by witness to admit him to pay during a particular year the same annual composition as the other occupiers of land.*

Whether or no did you ever and when pay to the said complainant any and what sums or sum of money in respect of the tithes of the said defendant in the parish of B. for the years — or — or either and which of such years, and whether or no by the instruction or direction of the said defendant or how otherwise? And whether or no did you at the time of such payment or payments or any of them or at any other time or times and when request or apply to the said complainant to admit the said defendant for the year — into the annual agreement that the said complainant was in the practice of making with the occupiers of land in the parish of B. or some of them by way of composition for their tithes in the said parish, or make any request or application to the said complainant to any such and what effect? And whether or no did you make such request or application by the instruction or direction of the said defendant, or did you previously inform him or intimate to him that you would make such request or application on his part, or did you at any time and when first afterwards inform him thereof, and did he approve thereof, or how otherwise? Set forth &c.

*To prove payment of what became due from the defendant for his tithes, whether the sums paid were computed according to certain exhibits, and whether such payments were made by drafts or in money, and by the defendant's instructions.*

Whether or no did you at any time or times and when respectively pay to the said complainant the sums which became due from the said defendant for his tithes in the said parish of B. for the years — and — or either and which of them? And whether or no was or were the sum or sums so paid by you computed according to the said paper-writings and agreements marked (A) and (B) or either and which of them as you for any and what reason know or believe? And whether or no did you make such payment or payments by any draft or drafts of the said defendant or in what manner, and whether or no with the monies of the said defendant, and whether or no by his instructions or directions or with his knowledge or approbation, or how otherwise? Set forth &c.

*To prove whether the plaintiff desired witness to inform the defendant that witness could not be permitted to sign the annual agreement on his part, but that he must set*

Whether or no did the said complainant at the time you made the payment for the tithes of the said defendant for the year — request you to inform the said defendant that he could not permit you to sign on his part the annual agreement for the year — but that the said defendant must set out his tithes in kind, or to any such and what



effect, and whether or no did you so inform the said defendant, and if not, why? Set forth &c.

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*out his tithes in kind, and whether witness so informed defendant.*

\* Did or not the said F. E. in the pleadings in this cause named in his life-time and from and up to what time in particular carry on any and what trade or dealing and in what sort of merchandize? Declare &c.

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*To prove a deceased person having been a trader within the meaning of the bankrupt laws.*

Of what trade or profession are you? Do you know the copyhold premises in the pleadings in this cause and in the 5th interrogatory mentioned, and how long have you known the same? Of what annual value were the same when J. A. the defendant in the title to these interrogatories named first took possession of the same as you know or for any and what reason believe? Of what annual value are the same now, and particularly what is the annual value of such part thereof as remains in the possession of the said J. A.? Declare &c.

*To prove the annual value of premises at the time the defendant took possession, and also their present value.*

\* Are you not acquainted with the parish of W. and the rectory of W. described in the particular of the estate in the pleadings of this cause mentioned? If yea, Do you or not know and by any and what means what was the value of the advowson of the said rectory on the 4th of October 1821, and how do you calculate and make out such value? Declare &c.

*To prove the value of an advowson.*

Whether or no were you at any time and when employed by — to estimate the value of the estate and premises described in the printed particular of sale marked (A) now produced &c.? If yea, Did you form your estimate of the value from any actual survey and admeasurement or from any and what other information respecting the quantity of lands to be sold, and in particular in forming such valuation at what quantity did you compute certain lands part of the said estate called the —? And whether or no should you in any and what manner have reduced the estimate of the value of such estate and premises if you had known the said lands called the — contained a less number of acres than they were so computed at by you?

*To prove the estimated value of an estate;*

*at what quantity witness computed certain lands, and in what degree it would have reduced the estimate if the witness had known that certain lands contained less than they were computed at.*

*To prove the valuation of the reversionary interest in houses after the expiration of existing leases previously to the sale thereof, that the valuation of one lot exceeded another lot containing the same number of houses and let at the like yearly rents, and the reason of such difference.*

\* Did you previously to the time of the sale of the estate in the pleadings of this cause mentioned make any and what estimate of the value of the reversion of the said houses or lots after the expiration of the leases under which the said houses were held? And if yea, How did you make such estimate or valuation, and was or not in particular the valuation of lot 10 or the houses comprised in such lot higher than the valuation of some other lot containing the same number of houses and let at the same rents, and what was the reason of such difference in the valuation of such reversion? Declare &c.

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*To prove the cancelling of a will.*

\* Do you know whether the said T. M. in the 1st interrogatory named ever and when and in whose presence cancelled any will or testament made by him and of what date in particular? And if yea, Were you present at the time, and did the said T. M. inform you or make any declaration why he cancelled such will or testament? And set forth the particular words or declarations used or made by the said T. M. as the reasons for his cancelling such will or testament as nearly and fully as you can recollect the same; Declare &c.

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[*To prove the execution of wills, see p. 211, antea.*]

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## SECT. III.

FORMS OF INTERROGATORIES FOR THE EXAMINATION OF PARTIES, AND ALSO FOR THE EXAMINATION OF CREDITORS AND THEIR WITNESSES, AND OTHERS, UNDER DECREES AND DECRETAL ORDERS.

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*Interrogatories for the examination of the personal representatives of an administrator as to his intestate's estate and effects exclusive of his share in a partnership business, and also as to the debts which were owing by the intestate.*

Between &c.

Interrogatories to be exhibited &c. [*For a form of title, vide antea, p. 149.*]

1st. Whether or no was R. P. the intestate in the pleadings in this cause named at the time of his death possessed of or entitled to any personal estate and effects other than and besides and exclusive of his part share or interest in the copartnership trade and business in the pleadings in this cause mentioned, and the stock and effects belonging thereto? If yea, Set forth a full true and particular inventory and account thereof and all the particulars whereof the same consisted, and the full true and utmost value thereof, and all the particulars thereof which were possessed by you or any and which of you and by any other person or persons by your or any and which of your order and for your or any and which of your use, or by the said late defendant T. P. or any other person or persons by his order or for his use in his life-time, and how and in what manner the same were and have been applied or disposed of, and also an account of all and every sums and sum of money received by sale or on account of the said intestate's personal estate and effects other than and independent of or distinct from his share interest or concern in the copartnership trade or business in the pleadings in this cause mentioned or the stock or effects belonging thereto, or other-

wise on account of the said separate personal estate and effects of the said intestate, and when by whom and of whom for what and on what account or accounts the same and every part thereof were or was so received, and whether any and what part or particulars of the said separate personal estate and effects of the said intestate remains or remain outstanding or unreceived.

2d. Whether or no was the said intestate R. P. at the time of his death separately indebted to any persons or person besides or exclusively of the debts owing from him as a partner in the aforesaid copartnership concern or business? If yea, Set forth a full true and particular account of all and every such debts; Have you or not or have or hath or not any and which of you or any persons or person by your or any and which of your order or on your or on any and which of your behalf paid laid out or expended, and did the said late defendant T. P. or any other person or persons by his order or on his behalf in his life-time pay lay out or expend any and what sums or sum of money in or towards the discharging of all or any and which of such debts or of the funeral expenses of the said intestate R. P.? If yea, Set forth a full just true and particular account of all and every such sums or sum of money, and when and by whom and to whom and for what or on what account or accounts the same and every part thereof were or was so paid laid out or expended.

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*An interrogatory for the examination of an agent  
or steward.*

*To prove whether the examinant was empowered by the testator to let and sell his freehold and leasehold estates and to receive the rents thereof;*

*Also to prove the particulars of such estates, how long the examinant has been in possession of any part,*

Whether or no were you in the life-time of the said testator T. D. and for how long time before his death empowered by him or any other person and whom to let and sell all or any and what part of the freehold and leasehold estates of the said testator and to receive the rents and profits thereof, or do you otherwise and how know of what freehold or leasehold estates the said testator died seised or possessed or entitled unto? If yea, Set forth a full true and just rental description and particular thereof, and where the same and every part thereof are situate, and the yearly value of each particular thereof, and in whose

tenure or occupation the same and every part thereof then was or since has been and now is, and under what leases or terms of years, if any, and at what yearly or other rent or rents; And set forth for how long time you have been in possession or receipt of the rents and profits of such freehold and leasehold estates or any and what part thereof, and by what right and title and for whose use; And also set forth a full true and particular account of all and every sum and sums of money which have been received by you or any other person or persons by your order or for your use for or in respect of the rents and profits of the said estates or any part thereof which have or hath become due since the death of the said testator, and what and by whom and for whose use and for what rent and of what part of the said estates and when due all and every such sums were respectively received, and whether any and which of such rents and profits are now in arrear, and if so, why; And also set forth a full true and particular account of all and every the sum and sums of money which have been from time to time paid and disbursed by you since the death of the said testator for or on account of the said freehold and leasehold estates of the said testator, and when and to whom and for what all and every such sums were respectively paid and disbursed; Set forth &c.

*what rents have been received by him and what remain in arrear, and also as to what monies have been expended on the estates.*

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*Interrogatories for the examination of a defendant before the Master, to prove the number and age of her children and when baptized.*

Between B. B. and others, Plaintiffs,  
and  
T. A. and others, Defendants.

Interrogatories exhibited on behalf of the plaintiffs before J. S. H. esq. &c.

1st. Whether or no were there any children living of the marriage between you and your late husband W. A. in the pleadings in this cause named at the time of his death, and what were their respective names, and when and where were they severally born, and are or is any or either and which of them since dead, and when did he she or they die?

2d. Whether or no were they or any or either and which of them at any time or times and when and where and by whom baptized, and whether or no were or was any entries or entry at any time or times and when made in any registers or register of any and what parish church or churches or chapels or chapel or other places or place as to the birth and baptism of all or any or either and which of them?

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*Interrogatories for the examination of creditors and their witnesses.*

Between A. B. and C. D. Complainants,  
and  
E. F. and G. H. Defendants.

Interrogatories exhibited by the complainants before W. G. esq. one of the Masters of this honorable court, for the examination of the creditors of T. H. esq. deceased in the pleadings in this cause named and of their witnesses, in pursuance of the decree and order of this court made on the hearing of this cause on the 8th day of March 1781.

*To prove the debts due to the examinants at the time of the intestate's death, and whether any part thereof has been satisfied.*

\* 1st. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what account, and have you or have you not at any time or times and when and from whom received any and what satisfaction for the same or any part thereof, and is the same and every or any and what part thereof still justly due and owing to you? Declare &c.

*To prove what monies are due on mortgages or other securities and the particulars thereof.*

\* 2d. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum of money for principal and interest due to you on mortgage or other security or securities made from him to you, and when does or do such mortgage deed or other security or securities bear date, and for what consideration was or were the same made and by and before whom and when executed, and who is or are the subscribing witness or witnesses to the execution

thereof, and have you or have you not or any other person and who on your account or behalf and when received such principal money and interest or any and what part thereof, as you know have heard and believe? Declare &c.

\* 3d. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what judgment, and when was the same confessed or recovered by you or whom else in any and what court against the said T. H., and have you or have you not or any other person and who on your account or behalf or on any other account and when and from whom received any and what satisfaction for the same or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing as you know and do believe? Declare &c.

*To prove what monies are due on judgment, and when such judgment was confessed.*

\* 4th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what bond or other security made and entered into by him to you or any other person or persons and whom by name, and when was the same so made and given and for what consideration or on what account and in what penalty, and what was the consideration thereof, and when does the same bear date, and hath or hath not the same been and when paid off and discharged, or is any and what part thereof still justly due and owing to you or whom else on the said bond as you know have heard and do believe? Declare &c.

*To prove what monies are due on bond.*

\* 5th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what promissory or other note, and when and for what consideration was the same so made or given or indorsed to you or whom else by the said T. H. and what is the date thereof, and hath or not the same and every or any and what part thereof been and when paid off and discharged, or is the same or any and what part thereof still justly due and owing to you or whom else as you know have heard and believe? Declare &c.

*To prove what monies are due on promissory notes.*

\* 6th. Was the said T. H. in his life-time and at the time of his death indebted to you in any and what sum or sums of money on any and what book debt or debts for any and what goods sold and delivered by you to him or by his order or for his use or on his account, and at what particular time

*To prove what is due for goods sold and delivered.*

or times were the same so sold and delivered by you to him or by his order or for his use, and what was or were the particular or particulars thereof, and hath or have or not the same or some and what part or parts thereof been and when paid off and discharged, and is or are the same and every or any and what part or parts thereof still remaining justly due and owing thereon? Declare &c.

*To prove what is due for work and labour.*

\* 7th. Was the said testator T.H. in his life-time and at the time of his death justly and truly indebted to you in any and what sum or sums of money for work and labour done and performed by you and your journeymen and servants or any of them and for materials and things found and provided by you and used in and about such work for the said T. H. or by his order, and when where and at what place or places? And have you or have you not or any other person or persons and who on your account or behalf or on any other and what account and when and from whom received any and what satisfaction for the same or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing to you or whom else as you know and do believe? Declare &c.

*To prove what is due to the deceased's solicitor.*

\* 8th. Was the said T. H. in his life-time and at the time of his death justly and truly indebted to you in any and what sum or sums of money for business done by you, and for your fees and for money necessarily paid laid out disbursed and expended by you and when for him or on his account or behalf in any and what business, and have you or have you not or any other person or persons and who on your account and behalf or on any other and what account and from whom and when received any and what satisfaction for the same or any and what part thereof, and is the same or any and what part thereof still justly due and owing to you or whom else as you know or do believe? Declare &c.

*To prove the execution of bonds and other exhibits by the subscribing witnesses.*

\* 9th. Was or were the bond or bonds or other writing or writings marked — now produced and shown to you at this the time of your examination or any and which of them signed sealed or executed in your presence and by whom? Were you or not a witness to the signing sealing or executing such bond or bonds or other writing or writings or any and which of them? Is your name set or subscribed as a witness to the same respectively, or any



and which of them, of your own proper hand-writing, and is or are the name or names of the other subscribing witness or witnesses thereto of his their or any and which of their own proper hand-writing or not? Declare all that you know or believe concerning the same.

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*Interrogatories for the examination of a person claiming to be a creditor, to prove the actual consideration of a bond, and under what circumstances the same was executed; also as to loans of monies in the examinant's charge stated to have been lent, and as to an agreement made with him for the passage of a woman and two children on board a vessel.*

Between B. M. widow, and others, Plaintiffs,  
and  
B. N. and others, - - Defendants.

Interrogatories exhibited on behalf of the said defendants before J. S. esq. one of the Masters of this honorable court to whom this cause stands referred, for the examination of T. S. esq. who claims to be a creditor of the testator G. S. in the pleadings of this cause named, pursuant to the decree made in this cause bearing date the — day of —.

1st. When and where and in whose presence did the said testator G. S. execute the bond to you for the sum of £— in your charge mentioned, and at what time of the day was such bond executed and was it not after dinner, and was the said G. S. then intoxicated or in any and what degree heated with liquor, and was not the said G. S. addicted to drinking, and by whom was such bond prepared, and when in particular, and by whose directions, and what was the consideration of such bond; and if you allege that the consideration was for monies advanced or paid by you to or for the use or on the account of the said G. S., then set forth when and where

*To prove under what circumstances a bond was executed, and the consideration thereof;*

*Whether the obligor was not intoxicated at the time he executed the same, and whether he had any occasion for the sum alleged to have been lent, for the securing whereof the bond was executed.*

and in what manner and in whose presence and to whom such monies and every part thereof were so advanced and paid? Did not the said G. S. pay to you the sum of £—— for his passage from —— to —— before or upon or soon after his coming on board your ship, and did not the said G. S. bring on board with him the further sum of £—— or thereabouts, or some other and what further sum as you know or believe, and how happened it therefore that the said G.S. had occasion for the said sum of £——, and how did he spend the same, and what did he do therewith?

*To prove the time of payment of a sum in the examinant's charge alleged to be due to him and to have been paid over to another person.*

*To prove the mode and time of advancement of other sums in the examinant's charge stated to have been lent.*

2d. When and where and in whose presence did you pay to Mr. S. in your charge named, the sum of £—— therein mentioned, and when and where and in whose presence did the said G.S. request you to pay the same, and when and how did the said G. S. become indebted in the said sum of £—— to the said Mr. S.?

3d. When and where and in what manner and in whose presence did you advance to the said G.S. the sum of £—— and every part thereof in your said charge stated to have been lent by you to the said testator at ——, and how did the said G. S. spend the same, or what did he do therewith? When and where and in what manner and in whose presence did you advance to the said G. S. the sum of £—— and every part thereof in your said charge stated to have been lent by you to the said G. S. at ——, and for what purpose did he require such loan?

*To prove the date of the agreement for the passage of a woman and two children, how they were treated, and the difference in the rate of payment for the passage of a woman and two children where they are treated as common passengers, or where they dine at the captain's table.*

4th. When and where and in whose presence was the agreement made between you and the said G. S. for the passage of Mrs. M. and her two children from —— to ——? Did the said Mrs. M. or her children dine at your table on the passage, or were they not treated by you as common passengers, or how otherwise? And what is the usual and customary payment for the passage of a woman and two such children from —— to ——, who are treated as common passengers or one treated as the said Mrs. M. and her two children were treated by you, and what is the usual and customary payment for such a passage for a woman and two such children who dine at the captain's table?

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*As to the existence of a bond, and what has become of the same; also to prove the hand-writing, and acknowledgments or admissions made by the obligor.*

Between &c.

Interrogatories exhibited on behalf of W.T. and E.T. who claim to be creditors of the said defendant, before S. T. esq. one &c. to whom this cause stands referred, for the examination of W. L. for the proof of their debt, pursuant to &c.

1st. Whether or no have you at any time and when and for how long had in your custody possession or power, or have you at any time or times and when respectively seen in the custody possession or power of any other person or persons and whom, a bond or obligation in writing executed or purporting to be executed by the present Marquess of D. by his then name of Earl of B. of the date and in the words and figures or to the purport and effect herein-after set forth, or any other and what bond executed or purporting to be executed by the said Marquess of D. by his then name of Earl of B. to J. F. T. the wife of W. T. of M. by her then name of B. of any other and what date, or in any other and what words and figures, or to any other and what purport and effect? [*Setting forth the bond.*]

2d. Whether and from whom and upon what occasion did you receive such bond or obligation if the same hath ever been in your custody possession or power, and what is become of the said bond, and where is the same now or was when you last knew thereof, and to whom and when and upon what occasion did you give up the custody possession or power of the said bond? Or if the said bond hath never been in your custody possession or power, then upon what occasion or occasions did you see the same in the custody possession or power of any other person or persons; and what is now become thereof as you know or for any and what reason believe?

3d. Are you acquainted with the character of the hand-writing of the said Marquess of D., and have you ever seen the said Marquess write, or by what other means did

*To prove the existence of the bond.*

*To prove from whom witness received the same, and to whom he delivered it, and what has become of the same.*

*To prove the hand-writing of the signature to the bond, and of the attesting*

*witness, and also the hand-writing of the body of the bond.*

you become acquainted with the character of his hand-writing, and whether or no do you believe that the name "B——" set and subscribed to the said bond or obligation was of the proper hand-writing of the said Marquess, or if not why; and whether or no was the name of any attesting witness and whom set and subscribed to the said bond, and are you by any and what means acquainted with the character of the hand-writing of such attesting witness, and was such name of his proper hand-writing, and is such attesting witness now living or dead, and when did he die? And do you know of whose hand-writing was the body and condition of the said bond?

*To prove whether the obligee in the bond gave authority to any person to receive the money due thereon.*

4th. Whether or no was any instrument or other authority produced to you whereby the said Mrs. T. the obligee in the said bond authorized and empowered any other person and whom to receive the money due on the said bond, or otherwise to discharge the same? If yea, Set forth the particulars of such instrument or other authority, and what hath become thereof.

*To prove acknowledgments or admissions made by the obligor that he gave the bond for the obligee's own benefit.*

5th. Whether or no have you at any time or times and when and upon what occasion or occasions had any conversation with the said Marquess of D. upon the subject of the said bond, or have you at any time or times and when and upon what occasion or occasions heard the said Marquess of D. speak of the said bond; and whether or no did the said Marquess of D. upon such occasion or occasions acknowledge or admit that he gave the said bond for the proper use and benefit of the said Mrs. T. or how otherwise?

*To prove letters as exhibits.*

6th. Look upon the letters or paper-writings now produced &c.; Of whose hand-writing are the said letters or the signatures and superscriptions thereto respectively as you for any and what reason know or believe?

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*Interrogatories for the examination of executors  
before the Master.*

Between A. B. - - - - Plaintiff,  
and  
C. D. &c. - - - Defendants.

Interrogatories exhibited on behalf of the said plaintiff before I. E. esq. one of the Masters of this honorable court, for the examination of the defendants pursuant to the decree made in this cause bearing date the — day of —.

Whether or no was D. W. deceased in the pleadings of this cause named at the time of his death possessed of entitled to or interested in any and what goods chattels personal estate and effects as you know or for any and what reason believe? If yea, Set forth a full true and just inventory and account thereof and of every part thereof and of all the particulars whereof the same consisted, and the quantities qualities full real and true valuations of all such particulars; And whether or no were all or any and which of such particulars and to what amount and value possessed or received by or come to the hands of you or one and which of you or any and what persons or person by the order or for the use of you or one and which of you, and how and in what manner and when and where and by whom and for how much have or hath the same and every or any and what part thereof been sold or disposed of, and whether any and what parts thereof and to what value and amount now remain undisposed of, and what is become thereof? Whether or no were any and what sums of money due or owing to the said D. W. at the time of his death? If yea, Set forth a full true and particular account of all and every such sums, and from whom and for what the same were respectively due, and whether on any and what securities or security and whether carrying interest or not and at what rate, and how much was due for interest thereon respectively at the time of his death; and also a full true and just account of all and every sums and sum of money from time to time received by or by the order of or for the use of you or either of you in or towards

*As to the particulars of the personal estate and the application thereof by the examiners, and also as to the debts due to the testator at the time of his death, and what monies have been received in discharge thereof.*

the discharge of such debts or any of them or the interest thereof or of any of them since the death of the said D.W., and when and by whom and for whose use and for what all and every such sums were respectively received; and what sums or sum of money still remain due in respect thereof or of the interest thereof or of any of them and from whom, and why such sums have not been gotten in and received, and where do the persons from whom the same are respectively due live and reside? Set forth all the matters aforesaid according to the best of your respective knowledge remembrance information and belief.

*As to the debts owing by the testator, and what monies have been paid towards the discharge thereof, and of his funeral expenses.*

Whether or no was the said D.W. at the time of his death indebted to any and what persons or person in any and what sums or sum of money? If yea, Set forth a particular account of all and every the debts whatsoever which were then justly due and owing from him, and to whom and for what and on what security (if any) the same were respectively due; and whether any and what sums or sum of money have or hath been since paid by you in or towards the discharge of all or any and which of such debts and when and to whom and for what; and whether any and what sums or sum of money do or doth now remain unpaid on account thereof; Whether or no were or was any and what sums or sum of money paid and disbursed by you for or on account of the funeral expenses and debts of the said testator or otherwise in relation to his estate, and when and by whom and to whom and for what were all and every such sums respectively paid? Set forth &c.

*As to the testator's leasehold property, what rents have been received therefrom, and what parts have been sold;*

Whether or no was the said testator at the time of his death possessed of or entitled to any leasehold property? If yea, Set forth the particulars of which the same consisted and where the same and every part thereof was situate, and by whom and for what term or terms of years and under what yearly or other rent or rents the same and every part thereof was held at the death of the testator, and whether any and what sums or sum of money have been received by you or either of you in respect of such rent or rents and when and from whom and for what rents respectively; And whether or no have you or either and which of you sold any and what part of the said testator's leasehold property? And if yea, When and to whom and for what was the same sold, and what sum or sums of money hath or have

been received by you and either and which of you in respect of such sale, and when and from whom and for what was or were such sum or sums received, and what now remains due in respect of such sale, and why the same is outstanding and unpaid? And set forth also a full true and particular account of the stock in trade which the said testator was possessed of or entitled to at his death, of what the same and every part thereof consisted, and what at the said testator's death was the full and true value of each and every part thereof; And set forth also a full true and particular account of the monies produced by the sale of such stock in trade, and when and to whom and for what the same and every part thereof was sold or what became thereof; Set forth all and every &c.

*also as to the testator's stock in trade, the value thereof, and what monies have been received by sale thereof.*

Whether or no was the said testator J. B. at the time of his death seised of or otherwise and how entitled to any and what freehold and copyhold estates? If yea, Set forth a full true and just rental description and particular thereof, and the number of acres thereof respectively, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure or occupation the same and every part thereof respectively then was or since has been and now is, and under what leases or terms if any, and at what yearly or other rent or rents; And set forth also whether any and which of such estates or any and what part thereof have or hath since the death of the said testator J. B. been sold and disposed of, and when and where and by and to whom and for how much every particular thereof hath been sold and disposed of, and whether at the full and utmost value thereof, and if not, why, and how and in what manner the money arising from the same hath been paid and applied; And set forth also a full true and particular account of all and every sum and sums of money which have been from time to time received by you or any or either and which of you or by any other person or persons by your or any or either and which of your order or for your or any or either and which of your use for or in respect of the rents and profits of the said freehold and copyhold estates and every or any part thereof which were due and owing at the death of the said testator

*As to the freehold and copyhold estates to which the testator was entitled, what parts have been sold, and how the purchase-money has been applied; also as to what rents have been received, and what remain in arrear.*

or which have since become due, and when and by whom and from whom and for what all and every such sum and sums were respectively received, and whether any and which of such rents and profits are now in arrear, and if so, why?

*As to what money has been received for principal and interest due on bond.*

Whether or no have you been paid or in any manner satisfied any part of the principal money of £—— mentioned in the bond or obligation of T. B. the said testator bearing date &c. or any part of the interest which hath accrued due thereon? If yea, Set forth the particulars and amount of all and every sums or sum which you have been so paid or satisfied and when respectively and by whom and in what manner.

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*Interrogatory for the examination of executors and trustees as to any personal estate got in or disposed of by them, and monies received by sale of real estate and from the rents thereof, since the time of the examinants putting in their answers to the plaintiff's bill.*

Hath not some and what part of the personal estate and effects of R. H. esq. deceased, the testator in the pleadings in this cause named, or of the produce of such personal estate, or of the money arisen by sale of his real estate or any part thereof, or in respect of the rents and profits of his real estate or of any part thereof, been possessed by or come to the hands of you or one and which of you, since the respective times of your respectively swearing to your respective answers in the plaintiff's bill in this cause? Set forth a full true and just account of all and singular such personal estate and the produce thereof which hath been so possessed or received by you respectively or by your respective order or for your respective use, or come to your respective hands since the time of swearing your said respective answers, and the natures kinds qualities and quantities and the full real and true value of all and every of such particulars, and when and by whom and to whom all and every or any and which of such particulars have been sold or disposed of, and whether any and what part thereof remains undisposed of, and what is become thereof? Hath any and what part of the personal estate of the said



testator R. H. which remained undisposed of at the time of swearing your said respective answers been since sold or disposed of and when and by and to whom and for how much, and whether for the full value thereof, or how much under the full value thereof respectively, and what sums or sum of money have or hath been received for the same, and when and by whom and for whose use? Set forth also a full true and just account of all and every the sums or sum of money which have or hath been from time to time received by you or either of you, or by any persons or person by the order or for the use of you or either of you since the swearing of your said respective answers, for or in respect of the produce or money arisen by sale of the real estate of the said testator or any part thereof, or the rents or profits of such real estate or any part thereof, and when and by whom for what and on what account all and every such sums were respectively received? Set forth all and every the matters and things aforesaid according to the best of your respective knowledge remembrance and belief.

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*Interrogatories for the examination before a Master of the executor and heir at law of a deceased defendant, who was the agent, steward, receiver, and manager of the estates in question.*

Between &c.

Interrogatories exhibited &c.

1st. Set forth according to the best of your knowledge and belief a full true and particular account of all and every the rents issues and profits and sums and sum of money arisen from rents issues and profits of the estates of the plaintiffs Viscountess S. and C. C. in the pleadings mentioned, situate in the several counties of &c. or any of them, which have arisen or become due since the death of J. B. their mother, received by or come to the hands of the late defendant R. B. in his life-time, and you the now defendant R. B. as his heir at law and executor since his death, or any other person or persons by your or either of

*As to the rents received, or which without wilful default might have been received.*

your orders, or for your or either of your use, or which without your or either or one of your wilful default might have been received thereout, with the times when and from whom and for what the same and each and every of them were respectively received or might have been received.

*As to monies laid out in repairs, &c.*

2d. Set forth in manner aforesaid a full true and particular account of all and every sums and sum of money paid laid out expended disbursed or allowed for repairs taxes and other outgoings in respect of the said estates or otherwise, to for or on account of the plaintiffs or any of them by the late defendant R. B. in his life-time, and you the now defendant R. B. since his death, or by any other person or persons by your or either of your order or on your or either of your account, with the times when and by and to whom and for what the same and each and every of them were so paid laid out expended disbursed or allowed.

*As to what parts of the estates have been sold, and the monies received therefrom ;*

3d. Set forth in manner aforesaid a full true and particular account of all such parts of the said estates as were at any time or times sold since the death of the said J. B. the mother of the said plaintiffs, with the times when and to whom and for what prices respectively the same and every part thereof were or was sold, and also an account of all and every sums and sum of money arisen from such sales or sale received by or paid to the account of or in anywise come to the hands of the said late defendant R. B. or to the hands of his bankers or any other person or persons by his order or for his use, with the times when and from whom and for what all and every such sums and sum of money were or was received or paid; and also a full true and particular account of all timber which hath been cut down in or upon all or any part or parts of the said estates of the said plaintiffs Viscountess S. and C. C. at any time or times since the death of the said J. B. their mother, with the times when and the names of the particular woods fields grounds or places in which the same were cut, and the number of trees from time to time so cut, and the prices or value thereof respectively, and to whom the same were sold, and by whom the same were cut down respectively from time to time; and also a full true and particular account of all and every sums and sum of money which at any time or times and when were received by or come to the hands of the said late defendant R. B.

*Also as to what timber has been cut down and on what grounds, the value thereof, and to whom sold, and the monies received on account thereof, or which without wilful default might have been received.*

or any other person or persons by his order or for his use from such timber as aforesaid, or which without his own wilful default might have been received, and from whom and for what all and every such sums and sum of money were or was received.

4th. Set forth also in manner aforesaid a full true and particular rental of all and every the said estates of the plaintiffs &c. in the several counties aforesaid as the same stood at the time of the death of the said J. B. their mother, specifying therein the names of all and every the tenants and the yearly rents of each of the said estates at that time; And also set forth all and every increase or advance of all and every or any of the rents of the said estates from time to time made, with the particular times or periods when and from which such increase or advance took place, so as to show what was the yearly amount of the rentals of the said estates in every year when any advancement or increase took place from the death of the said J. B. to this time, save and except such increase or advance as may have been made by the plaintiffs in the rents of such of the said estates as were delivered into their hands since their possession thereof.

5th. Set forth in manner aforesaid a full true and particular account of all the woods and wood-lands parcel of the said estates, with the names and quantities or number of acres thereof respectively, and the places where the same are situate; and also a full true and particular account of all such lands and tenements parcel of the said estates as at any time or times were not let to any tenant or tenants, or were in hand or occupied by the said late defendant R. B. or any other person or persons by his order or on his account, with the names and quantities or number of acres and yearly value thereof respectively, and when and how long from time to time the same were so unlet to any tenant or tenants or were in hand or occupied by the said late defendant R. B.; And set forth also in manner aforesaid the names of the several manors belonging to the said estates, and in what particular counties the same are situate, with the natures and extents of such manors respectively, and a full true and particular account of all quit rents and of all fines heriots and other uncertain profits belonging or arising from each of such manors respectively, with the yearly amounts thereof.

*As to the rental of the estates at the time of the decease of the plaintiff's mother; what increase has been made in the rents, and the times when, and the yearly amount of the rentals of the estates.*

*As to the woods and woodlands, and the names and number of acres thereof;*

*Also as to the estates which were from time to time on hand or occupied by the deceased defendant;*

*Also as to the names of the manors belonging to the estates and the descriptions thereof, and of the quit rents, fines, &c. belonging thereto.*

*As to the names of the stewards employed by the deceased defendant in the collection of the rents and management of the estates.*

6th. Set forth in manner aforesaid the name or names and place or places of abode of the steward or several stewards employed by the said late defendant R. B. from time to time in the collection of the rents and management of the said estates and each of them respectively, from the time of the death of the said J. B. down to the time when possession of any of the said estates was taken by the plaintiffs, and down to the time of his own death as to such of the said estates as he continued in possession of to that time.

*Schedule required of the accounts of the stewards and agents of the estates;*

7th. Set forth in manner aforesaid a true and particular schedule of the accounts of all and every the stewards and agents of the said estates respectively from the time of the death of the said J. B. down to the time when the possession of any of the said estates was delivered into the possession of the plaintiffs, and down to this time as to such of them as the said late defendant continued in possession of until his death and which are now in your possession; and also a true and particular schedule of all the surveys field-books maps plans counterparts of leases rentals particulars books and papers of accounts minutes entries agreements and memorandums kept by all or any of the said stewards or agents of or concerning the said estates or any of them or the rents profits or management thereof, and whether any such have at any time or times to your knowledge information or belief been torn burnt or destroyed and when and by whom; or whether you have ever seen or heard of any such which are or is not now forthcoming, and what is become thereof according to the best of your knowledge information and belief.

*Also of all surveys, maps, rentals, &c. kept by them; and whether any have been destroyed and how.*

*Schedule and description required of all accounts, declarations of trust, letters, &c. kept by the deceased defendant of his receipts, payments, or transactions for or on account of the plaintiffs' estates, and whether any have been destroyed and how.*

8th. Set forth also in manner aforesaid a full and particular schedule and description of all and every or any books or book of account memorandums agreements declarations of trust letters minutes entries or other papers at any time or times kept by the said late defendant R. B. of or concerning his receipts payments or transactions for or upon account of the plaintiffs Viscountess S. &c. or all or any of their estates, or the plaintiffs Lord S. &c. or in any wise concerning the said estates or any of them; and whether to your knowledge information or belief any such books or book of account memorandums minutes declarations of trust letters entries or papers have at any time

been torn burnt or destroyed, or whether you have ever seen or heard of any such which are or is not now forthcoming, and if so, what is become thereof according to the best of your knowledge information and belief.

9th. Set forth in manner aforesaid a full true and particular account of all and every the manors messuages lands tenements and hereditaments which are comprised in the indentures of &c. in the pleadings mentioned, and in the indenture of &c. in the pleadings also mentioned, and in each and every of them; And also set forth a full true and particular account and rental of all such of the said manors &c. as now remain unsold, specifying therein the names of all and every the tenants or tenant or occupiers, and the names and quantities or number of acres of the fields and lands occupied by each tenant.

10th. Set forth in manner aforesaid a true and particular schedule of all title-deeds and writings and other deeds instruments evidences and writings relating to the said estates of the said Viscountess S. &c. in the several counties aforesaid or to any of them now in your custody or power, or which at any time or times have been in your custody or power or in the custody or power of the said late defendant R. B., and if any of the deeds and evidences relating to the said estates or any of them were at any time or times in the custody or power of the said late defendant R. B. or in your custody or power and are not now in your custody or power, set forth in whose custody or power the same now are or what is become thereof as you know have heard or for any and what reason believe.

11th. Do you not admit assets of the said late defendant R. B. sufficient to answer what on taking the aforesaid accounts shall appear to have come to the hands of the said late defendant? If not, Then set forth in manner aforesaid a full true and particular account of all and every sums and sum of money securities for money arrears of rent goods chattels personal estate and effects whatsoever of or belonging to the said late defendant R. B. at the time of his death, with the kinds qualities natures true and real values thereof respectively, and also set forth a full true and particular account of all such parts thereof as have been possessed and received by or which have come to the hands of you the said now defendant R. B. as his executor, with

*An account required of all the manors, &c. comprised in certain deeds, and a rental of such as remain unsold.*

*Schedule required of all deeds, &c. relating to the estates in question.*

*As to whether the examinant admits assets of the deceased defendant sufficient to answer what may appear to have come to his hands.*

the times when and how and from whom you have possessed or received the same, and what part or parts thereof, if any, now remain outstanding.

*Interrogatories for the examination of executors  
before the Master.*

Between L. M. - - - Plaintiff,  
and  
E. C. and others, Defendants.

Interrogatories exhibited on behalf of the plaintiff, before J. S. esq. one of the Masters of this honorable court to whom this cause stands referred, for the examination of the defendants M. C. and A. C. pursuant to the decree made on the hearing of this cause, bearing date the —— day of ——.

*As to certain particulars of the testator's personal estate, an inventory or schedule thereof required to be set forth;*

*Also as to the value of all such particulars and whether any of them have been sold, what monies have been received therefrom and how the same have been applied, and what balance remains due from the examiners.*

\* 1st. Whether or not was T. C. deceased the testator in the pleadings of this cause named at the time of his death possessed of or entitled to or interested in any books pictures china household goods and household furniture and live or dead stock or any and which of such particulars? If yea, Set forth a full true and particular inventory or schedule of such several articles, and the descriptions and true and utmost value of all such articles and effects at the time of the death of the said testator, and how and by what means do you ascertain the value thereof, or hath the value thereof been ascertained by any and what persons or person and whom by name, and whether or not are such several articles or any and which of them now in your or either of your possession or power, or what hath become of the same, and have or hath or not you or either and which of you sold or otherwise and how disposed of the same or any and which of them? Have you or hath either and which of you or have any person or persons and who by name by your or either of your order or for your or either of your use possessed or received all or any and which of such several articles, or any and what sum or sums of money from the sale and disposition thereof and of any and which of them? If yea, Set forth a full true and particular account of all such sum and sums of money, and of the times when the same were re-

ceived, and of the purposes to which the same have been applied, and of the amount or balance due from you and each of you in respect thereof; Set forth the several matters inquired after by this interrogatory, and all the particulars relating thereto, fully and at large according &c.

\* 2d. Whether or no was the said testator T. C. at the time of his death possessed of entitled to or interested in any and what goods chattels personal estate and effects other than and besides the several articles inquired after by the preceding interrogatory? If yea, Set forth a full true and particular account of all such personal estate and effects distinguishing the several particulars thereof; And whether or not have or hath you or either of you or any and what persons or person by your or either of your order or for your or either of your use possessed or received all or any and what part of such last-mentioned personal estate and effects of the said testator T. C., or any and what monies produced from the sale and disposition thereof or of any and what part or parts thereof? If yea, Set forth a full true and particular account of all such personal estate and effects and of all and every the sum or sums of money so possessed and received from the sale and disposition thereof, distinguishing the several particulars thereof, together with the names of the persons or person by whom the same and every part thereof were or was possessed and received, and what parts of such personal estate and effects now remain in your or either and which of your hands or power, and what is the amount or balance due from you and each of you in respect of the monies so possessed or received, and all other particulars relating thereto fully and at large? And whether or not is any part of the said testator's personal estate and effects now outstanding, and if so, in whose hands or power? Declare &c.

\* 3d. Have or hath you or either of you or any and what person or persons by your or either of your order or for your or either of your use paid laid out expended or allowed any sum or sums of money in or towards payment and satisfaction of the said testator's debts funeral and testamentary expenses or otherwise on account of the said testator's personal estate? If yea, Set forth a full true and particular account of all such sum and sums of money so paid laid out or expended, together with the times when and the names of the persons by and to whom and for what

*As to any other personal property to which the testator was entitled, and how the same has been disposed of.*

*As to any monies laid out by the examiners in payment of the testator's debts, funeral and testamentary expenses.*

the same and every part thereof have or hath been so paid laid out expended or allowed, and all the particulars relating thereto fully and at large according to the best and utmost of your knowledge remembrance information and belief.

*As to what debts remain unpaid.*

\*4th. Have all the debts due and owing by the said testator T. C. at the time of his decease and his funeral expenses been paid and satisfied, or do any and which of such debts now remain due and owing? And if so, To whom and to what amount and on what security or securities? Declare &c.

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*As to the particulars of the testator's interest in leasehold premises, and in whose occupation the same have been since his death, and at what rent.*

Was or not the said testator P. C. at his death possessed of or in some manner interested in a messuage or tenement at H. in the county of M.? If yea, Set forth the particulars of which the same consisted, and from whom and under what lease or agreement and for what term and at and by what yearly or other rent the same and every part thereof was holden by the said testator, and set forth also at what rent and other conditions and for what term of years you have since taken the same, and in whose occupation the same and every part thereof hath been since the death of the said testator and now is, and at what rent or rents.

*As to what property specifically bequeathed has been possessed by the examiners besides such as has been delivered over.*

Whether or no have you or either and which of you since the death of the said testator possessed any and what property of the said testator which was specifically bequeathed by him, other than and except such moieties as you have delivered to the specific legatees? If yea, Set forth a full true and particular inventory and account thereof and of every part thereof, and of all the particulars whereof the same consisted, and the quantities qualities full real and true values of the said particulars respectively.

*As to what annuitants under a will are living and who have died since the testator's death, what sums have been paid in discharge of their annuities, and what funds have been set apart to answer the same.*

Whether or no are any and which of the annuitants in the said testator's will named living, and have any and which of the said annuitants died since the death of the said testator, and when in particular, and hath or have any and what sum or sums of money been paid in discharge of any and which of their said annuities, and in particular in discharge of the annuities given for the charitable purposes in the said will mentioned, and when and by whom, and have any and what fund or funds been



set apart and in whose name or names and in what manner to answer the same annuities or any and which of them? Set forth &c.

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*Interrogatories for the further examination of executors, defendants, pursuant to a decree.*

Between S. H. and others, infants, by J. F.  
 their next friend, Complainants,  
 and  
 J. S. H. an infant, J. G., S. G., and  
 W. B., - - - - - Defendants.

Interrogatories exhibited on the behalf of the defendant J. S. H. for the further examination of the defendants J. G. and S. G. pursuant to the decree made on the hearing of this cause bearing date the — day of —, before J. S. esq. one of the Masters of this court to whom the said cause stands referred.

• 1st. Have any and what money securities for money book and other debts goods chattels estate and effects belonging to the personal estate of J. H. deceased, the testator in the pleadings of this cause named, at the time of his decease, or which have since accrued arisen or become due on account of his business carried on by you by virtue of his will or otherwise been received by you or either and which of you, or come to your or either and which of your hands custody possession or power, or to the hands custody possession or power of any other person or persons by your or either of your order, or for your or either of your use since the time of and other than and besides what is set forth in your last examination put in before the said Master? Set forth a full and particular account of all and singular such money securities for money book and other debts goods chattels estate and effects, and when and by whom and from whom and on what particular account the same and each and every part thereof were or was received.

*As to monies and effects received on account of the business carried on by the examnants by virtue of the will since the former examination.*

*As to the expenses incurred in the executorship or the management of the testator's business since the former examination.*

\*2d. Have you or either and which of you paid any and what sum or sums of money, or been at any and what expense or expenses in and about your executorship or in and about the management and conduct of the business of the said testator J. S. H. either by yourselves or by any person or persons appointed or authorized by you to manage and conduct the same business since your former examination put in before the said Master in this cause, other than and besides what are set forth in your former examination? Set forth the particulars of all such payments and expenses, and when and by whom and to whom paid and on what account; Were the same and every of them just debts and necessary expenses? Declare according to the best of your and each of your several and respective knowledge and belief.

*As to any outstanding personal estate, debts and effects, particularly as to certain specific articles.*

\*3d. Are there any parts of the goods chattels monies securities for money debts estate or effects either specific or pecuniary of or belonging to the estate of the said testator J. H. deceased at the time of his death or which have accrued or become due since his death, now outstanding unreceived or now remaining in your hands undisposed of and unaccounted for, and particularly a five-guinea piece, a silver pencil-case, sundry medals and small pieces of silver coin and other things? Have any and what means or endeavours been used by you or either and which of you or by your order to collect or get in such outstanding debts and effects, and when and in what manner? Have any or either and which of the persons owing such debts or sums of money to the said testator's estate, declined or refused to pay the same and for what reasons? Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge remembrance and belief.

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*Interrogatories for the examination of witnesses before the Master as to a testator's real estates, and the title-deeds belonging thereto.*

Between T. H. and S. his wife, Complainants,  
and  
H. J. and others, - - Defendants.

Interrogatories exhibited on behalf of the said complainants, before A. P. esq. one &c. [*the usual title*] for the examination of witnesses.

1st. Whether or no as you for any and what reason know or believe was A. B. the testator in the pleadings of this cause named at the time of his death seised of or otherwise and how entitled to or in any and what manner interested in any and what freehold and copyhold estates, and in particular had he any and what interest in a certain estate called P. in the parish of K. in the county of M.? Set forth a full true and just description and particular of all and every the freehold or copyhold estates which the said testator was seised of or entitled to or interested in at the time of his death, and where the same and every part thereof is situate, and in whose tenure or occupation the same and every part thereof then was or since has been and now is respectively; Set forth &c.

2d. Have you or had you at any time and when last in your custody or power any deeds or deed instruments or instrument papers or paper writings or writing belonging or in any manner relating to any and what freehold or copyhold estate which the said testator was seised of or entitled to or interested in at the time of his death, and in particular relating to the said estate called P., or to a certain messuage lands and premises situate in the parish of B. in the said county of M. called L. in the occupation of D. H., or to another messuage lands and premises in the said parish of B. called T. P. in the occupation of the said D. H., or to another messuage lands and premises called C. P. situate in the parish of M. in the said county in the occupation of J. J.? Set forth a list or schedule of all and

1. *As to the real estates to which the testator was entitled, and his interest in a particular estate.*

2. *As to the title-deeds relating thereto;*

*Schedule thereof required to be set forth.*

every such deeds or deed instruments or instrument papers or paper writings or writing, and set forth what is become of such thereof as were but are not now in your custody or power, and set forth also whether any person or persons and who in particular as you know or for any and what reason believe has or have now or has or have at any time and when had in his her or their custody or power any and what deeds or deed instruments or instrument papers or paper writings or writing belonging or in any manner relating to the said freehold and copyhold estates of the said testator, or any and what part thereof.

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*As to what the property of a lunatic consists, also as to the rents received and the application thereof, the repairs done to the estates, and what land-tax has been redeemed.*

1st. Of what did the property of the said lunatic consist at the death of his father and of what doth it now consist, and what part of it did then and doth now consist of personal property? And set forth a full true and just rental and particular of the real estate to which the lunatic became entitled at the death of his father, and the nature quantities and qualities thereof, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part thereof was at the death of the father of the said lunatic and since has been and now is, and under what yearly or other rent or rents and for what term or terms of years, and whether at full rack-rent or how otherwise.

2d. Have not you or some person or persons and who by your order or to your use since the death of the father of the said lunatic been in possession or receipt of the rents and profits of the real estates to which the said lunatic became entitled at the death of his father or of some and what part thereof? If yea, Set forth a full true and particular account of all and every sum and sums of money which hath and have been received by you or by any person or persons by your order or to your use for or in respect of the rents and profits of the said estates or any part thereof which have become due since the death of the father of the

said lunatic, and when and by whom and from whom and for what rent and of what part of the said estates and when due all and every such sums were respectively received; And set forth also a full true and particular account of the manner in which such rents and profits have been applied or disposed of by you in each year, particularly distinguishing how much thereof hath in each year been applied for the maintenance and provision of the lunatic and how much thereof for repairs and other outgoings.

3d. Were the repairs which have been so done to the said estates been done by you by the advice of any surveyor or builder and whom, and were the same necessary and such as the tenants of the said several premises had a right to require from their landlord? If so, why? And was the father of the said lunatic at the same average expenses for repairs in his life-time as you have incurred since his death? And if not why? And whether no is it a prudent course of management to let the said estates upon such terms that the tenants have a right to require such repairs, and might not the same have been let on repairing leases or otherwise upon terms more advantageous to the landlord? And would you have let the said estates upon such terms and have done the said repairs thereto if the said estates had been your own property? And have you not redeemed the land-tax on some and what part of the said estates, and for what reason?

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*Interrogatories for the examination of mortgagees in possession.*

Between &c.

Interrogatories exhibited &c. [*before the Master.*]

1st. Whether or no is or are there any and what sum or sums of money due and owing to you or any or either and which of you for principal or interest on the mortgaged premises in the pleadings in this cause mentioned? If yea, Set forth how much is due for principal and how much for interest and the particulars thereof respectively, and how you make out or compute the same? Set forth &c.

*As to what is due for principal and interest.*

*How long the exami-  
nants have been in re-  
ceipt of the rents and  
profits of the premises,  
and what has been  
received on account  
thereof.*

2d. Have you or either and which of you or any other person or persons and who by your or either and which of your order or for your or either and which of your use been for any time and how long in possession or receipt of the rents and profits of the said mortgaged premises or of any and what part thereof? If yea, Set forth a full true and just rental and particular thereof and where the same and every part thereof is situate and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part is and hath been during the time of such possession and under what yearly or other rent or rents? And set forth also a full true and particular account of all and every sum and sums of money which hath and have been received, or but for your or some or one and which of your wilful default or neglect might have been received by you or some or one and which of you or by any other person or persons and whom by your or some or one and which of your order or for your or some or one and which of your use, for or in respect of the rents and profits of the said mortgaged premises or any part thereof, and when and by whom and from whom and for what rent and of what part of the said mortgaged premises and when due all and every such sums were respectively received or might have been received? Set forth &c.

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*Interrogatories for the examination of a mortgagee  
of an estate in the West Indies.*

Between W. D. Q. and J. G., Plaintiffs,  
and

W. B., W. A., J. J., G. B., and  
W. L., - - - Defendants.

Interrogatories exhibited by the  
plaintiffs and the defendants J. J. and  
W. L. before Sir W. W. bart. one &c.

*As to the amount of  
the principal and in-  
terest due on the se-  
curities.*

1st. Is there or not any sum of money due and owing to you for principal or interest on the mortgages in the pleadings in this cause mentioned and in the decree in this cause particularly specified? If yea, Set forth how much is due to you for principal and how much for interest, and the

particulars thereof respectively, and how you make out or compute the same; Set forth the matters in this interrogatory inquired after according to the best of your knowledge remembrance information and belief; distinguish whether you set forth the same from your own knowledge or from any and what written book document or account, or from the information of any other person or persons, and if from the information of any other person or persons set forth the name or names of such person or persons and the time when you received such information; and if according to your belief only, set forth how and from whom in what manner and when you received the information on which you form your belief and all the grounds and reasons for such your belief, fully and at large.

2d. Have you laid out or expended any sum or sums of money in necessary repairs or lasting improvements upon the estates and premises in the island of J. comprised in the indentures of mortgage in the decree in this cause particularly mentioned? If yea, Set forth what sum or sums of money you so laid out or expended, and for what repairs or lasting improvements, and when where by whom and to whom particularly such sum or sums of money and every of them respectively was or were paid laid out or expended; And set forth and distinguish how much of such sum and sums of money hath been laid out or expended in necessary repairs, and how much in lasting improvements; Set forth the matters in this interrogatory inquired of you according to the best of your knowledge remembrance information and belief; distinguish whether you set forth the same from your own knowledge or &c. [*Conclude as in the 1st interrogatory.*]

3d. Set forth a full true and particular account of the rents produce and profits of the estates and premises comprised in the mortgages in the decree in this cause mentioned received by you or by any other person or persons by your order or for your use, or which without your wilful default might have been received thereout, and when where and at what times respectively and by whom and from whom respectively such rents produce and profits and every part thereof have and hath and might have been received, and why and for what reason or reasons any and what part and parts of such rents produce and profits have or hath not been received; Set forth the matters in this interrogatory

*As to what monies have been laid out in necessary repairs or lasting improvements.*

*As to what rents have been or without his wilful default might have been received by the examinant.*

inquired of you according to the best and utmost of your knowledge remembrance information and belief; distinguish whether &c. [*Conclude as in the 1st interrogatory.*]

*As to the estates taken possession of by the examinant under a writ of assistance, and the rents received therefrom.*

4th. Whether or no did you or any person for your use or on your account under colour of the writ of assistance in the decree in this cause mentioned, enter upon and take possession of any estates and premises the property of or belonging to the plaintiffs or those under whom they claim which were not comprised in the said several mortgages in the said decree mentioned or any or either of them? If yea, Set forth what estate or estates or premises you or any person for your use or on your account so took possession, and the nature quantity and quality thereof and the particulars thereof and of every part thereof; And also set forth a full true and particular account of the rents produce issues and profits of the said estates and premises in this interrogatory inquired after received by you or by any other person or persons by your order or for your use, or which without your wilful default might have been received thereout; and distinguish the same from the rents and profits of the estates and premises comprised in the said several mortgages, and set forth when and at what time and times particularly and by whom such rents produce issues and profits as by this interrogatory are inquired after have or hath been or might have been received, and why and for what reason or reasons any and what parts or part of such rents produce issues and profits have or hath not been received; Set forth the matters &c.; Distinguish &c.

*As to what sums have been laid out in lasting improvements on the estates last-mentioned.*

5th. Have you expended any sum or sums of money in lasting improvements upon the estates and premises in the preceding interrogatory inquired after, being the estates and premises not comprised in the mortgages in the decree in this cause mentioned? If yea, Set forth what sum or sums of money you so expended and for what lasting improvements, and when where by whom and to whom particularly such sum or sums of money and every of them respectively was or were paid laid out or expended; Set forth the matters &c.; Distinguish &c.

*To prove at what times the agents of his own estates transmitted their accounts of the produce of the estates in question;*

6th. Has it not been the constant and invariable usage for your agents or managers of your estates in the West Indies to transmit accounts every year or at any and what other stated or uncertain periods of all the sugars rum and other produce arising from the estates in the pleadings in



this cause mentioned and how the same have been disposed of? Were not such books annually or at some and what other stated or uncertain periods examined and the accounts therein contained signed or allowed by you as settled accounts or by some and what person or persons duly or in some and what manner authorized by you to settle and sign such accounts or to act on your behalf? Do not such accounts contain an account of all the produce arising from the estates in the pleadings mentioned, and how the same from time to time have been disposed of for the whole of the time since the same were taken possession of under the writ of assistance to the present time or for any and what part of such time; and if not for the whole of such period, Set forth from what time the accounts of the produce of the estates in question in this cause have been omitted to be included in the accounts returned to you or your agents in England of the produce of your other estates in the West Indies, and why and for what reason the same were so omitted? Have all and each and every of such signed accounts been produced and left with the Master to whom this cause stands referred, and if not why? Answer fully and distinctly the several matters inquired after by this interrogatory; And distinguish &c.

7th. Set forth a true and accurate account of the names of the managers of the estates in the pleadings mentioned in the West Indies and of the consignee or consignees of the produce thereof in England from the time the same were taken possession of as aforesaid to the present time, and from what time and up to what time each and every of such persons were manager or managers or consignee or consignees; Set forth the particulars inquired after by this interrogatory according to the best of your knowledge information and belief.

8th. What number of negroes or slaves was there on the estates in the pleadings in this cause mentioned at the time you took possession thereof under the writ of assistance in the said pleadings mentioned? Set forth a list or schedule thereof with the names of each and every of such negroes or slaves and of the issue and increase thereof existing at the time or since produced after you had so taken possession of the said estates; Were or were not some and which of such negroes or slaves removed at some and what time or times off and from the said estates to some and what

*at what times such accounts were examined and settled;*

*whether the same contain an account of all the produce of the estates in question, and of the application thereof since the examinant took possession;*

*And whether such accounts have been left with the Master.*

*As to the names of the managers of the estates in question.*

*As to the number of negroes or slaves on the estates in question at the time the examinant took possession under the writ of assistance and of the issue and increase thereof,*

*and whether any have been removed to any other estates and how*

*disposed of, whether any were sold and at what prices.*

other estates belonging to you in Jamaica or to some and what other place or places? If yea, Which of such slaves were so removed? Set forth the particulars and names of such slaves which were so removed and of the issue and increase thereof and when they were respectively so removed and what became of them, and how they and each and every of them and their issue and increase were disposed of; Were any and which of such negroes or of the issue and increase thereof sold and when and to whom and for what price or prices? Set forth &c.

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*Interrogatories for the examination of a mortgagee of a West India estate.*

*To prove that the crop on the plantation at the time the examinant sold the estate was comprised therewith in the sale, and that the same has been converted to his own use.*

1st. Whether or no on the sale of the plantation and estate by you to H. G. for which the said sum of £—— was the consideration or purchase-money, was the crop then on the said plantation or estate or any and what part thereof comprised in the said sale and in the said purchase-money of £——? If yea, Whether or no have or has any persons or person and who applied or converted any and what part of the crop so sold to your use and when and to what amount as you for any and what reason know or believe?

*As to whether the examinant has cleared the estate from all duties charged thereon on the sale thereof, and from all other incumbrances.*

2d. Whether or no have you in pursuance of the agreement or articles of sale between you and the said H. G. made the said plantation and other premises comprised in such agreement or articles free and clear of and from all estates rights royal and other duties, particularly the duties if any payable to the King of Denmark in respect of the said plantation and premises on the sale and transfer thereof or otherwise howsoever, and of and from all other duties claims and incumbrances? Do the said plantation and other premises or any and which of them now remain subject or liable to any and what duties claims or incumbrances contrary to the effect of the said agreement?

*To prove whether the examinant held any other securities besides the testator's bond and the mortgage of the plantation.*

3d. Whether or no had you any security or securities for the payment of the said principal sum of £—— and the interest thereon or any part thereof other than the said bond of the said testator T. B. and the covenant of the said H. G. and the mortgage or security of the said plantation or estate? If yea, Set forth the particulars of all

and every such securities and the value and amount thereof and what is now due thereon and from whom respectively.

4th. Whether or no have you in any and what manner and when resorted for payment of any and what part of the said sum of £—— and the interest thereof or of any and what part thereof to any and what other security other than the said bond of the said testator T. B., and if not, why? And whether if you had used due and reasonable diligence could not the payment of some and what part of the said principal sum of £—— or some and what part of the interest thereof have been in some and what manner enforced from some and which other of your securities other than the said bond?

*To prove what security mortgagee resorted to for payment of his money, and whether if he had used due diligence, the payment thereof could not have been enforced on his other securities besides the bond.*

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*Interrogatories relating to partnership matters.*

Between &c.

Interrogatories to be &c.

1st. Set forth a full true and particular account of all and every the sum and sums of money received by you or by any person or persons by the order or for the use of you and G. B. deceased in the pleadings mentioned or either of you on account of the copartnership trade carried on by the said G. B. and the said R. B., and after the decease of the said G. B. by you the said R. B. as in the pleadings mentioned, and when and from whom and to whom and by whom and on what account the same have been received and paid; Declare the truth &c.

*As to partnership monies received.*

2d. Have you or not at any and what time or times since the —— day of —— drawn any sum or sums of money out of the trade which was so carried on by you and the said G. B. and afterwards by you alone for any other purpose than for the purposes of such trade? If yea, Set forth a full true and particular account of all and every such sum and sums of money and when the same were drawn out by you respectively; And have you or not placed out or applied any and which of such sums of money at interest or in the purchase of government or other and what stocks and funds or in any and what other manner so as to make any profit or advantage thereby? If yea, Set forth how and in what

*As to what monies have been drawn out by the examinant for any other than partnership purposes, and in what securities or part thereof has been invested.*

manner and in what stocks funds or how otherwise you have applied each and every of such sums and sum of money, and all and every the sum and sums of money which you have received as the interest or dividends thereof or otherwise on account or by means thereof; Declare &c.

*As to the particulars of the partnership stock in trade and effects, and what debts are due on the partnership account.*

3d. Set forth a full true and particular account of the stock in trade outstanding debts and other property and effects which belong to the said trade or business which was carried on by you and the said G. B. as in the pleadings mentioned and which hath since been carried on by you, and all the particulars whereof the same consisted, and the natures kinds quantities qualities full true and utmost value thereof; and in case the same or any of them are not now in your possession or power, set forth in whose possession or power the same are; And set forth an account of the debts which are justly due and owing on account of such concern and to whom and for what the same are due and owing; Declare &c.

*As to the gains and profits made during and since the partnership.*

4th. Set forth a full true and particular account of the gains and profits which have been made since the — day of — in the said trade or business which was so carried on by you and the said G. B. and afterwards by you alone, and by means of the monies which you have received on account thereof, and how and in what manner you compute the same; Declare &c.

*To prove the existence of a partnership and the terms thereof, how long it continued, and upon what terms it was dissolved, and as to any declarations made relative thereto.*

1st. Whether or no were you acquainted with C. H. late of — but now deceased, and for how long did you know him before his death, and when and about what time did he die? Whether or no did the said — at any time and when take — as a partner with him in any and what business? If yea, What were the terms of such partnership, and what proportion or share was the said — to have therein, and for how long did such partnership continue, and when and for what reason was the same determined or dissolved and upon what terms, and whether or no have you at any time or times respectively heard the said — make any and what declaration or declarations respecting the said copartnership or the terms or conditions thereof or the commencement or dissolution thereof? Set forth &c.

2d. Whether or no were you at Christmas — and for how long before in any and what manner employed by the late — in the carrying on of his paving business? Whether or no did the said — at Christmas — or at any other time and when take any partner and whom in his said business, and for how long did such partnership continue, and in what name or names were the bills made out from that time to the persons for whom such business was done; And whether or no were you at any time and when after Christmas — employed and by whom and by whose directions in the making out or delivering of such bills or in the receipt of monies for the same, and in whose name or names were receipts for such monies given? Set forth &c.

3d. Whether or no did the said — in any and what manner and when and for how long time after Christmas — continue to carry on the paving business in which he had been concerned or in any and what manner to interfere therein or in any part thereof, or by whom was the said paving business and every part thereof and particularly the business of the government boards done and performed from Christmas — until the death of the said —, and in whose name or names were the bills made out from that time to the persons for whom such business was done? And whether or no were you at any time and when after Christmas — employed and by whom and by whose directions in the making out or delivering of such bills or in the receipt of monies for the same, and in whose name or names were receipts for such monies given? And whether or no in or about Christmas — or at any other time and when were the stock of carts horses barges and other property employed in the said paving business or any part thereof valued by any person or persons and whom? And if yea, Upon what occasion did such valuation take place and under what agreement and at what prices? Declare &c.

4th. Whether or no were — and the said — or either and which of them in or about the years — or — employed in the paving of — and any other and what street or places in the city of L.? If yea, To whom were the profits of such particular paving business to belong as you for any and what reason know or believe, and did you at any time or times and when hear the said —

*To prove the admission of a person into partnership, and in what names bills and receipts were afterwards made out.*

*To prove whether after a particular period a person continued to carry on or interfered in the business, and by whom it was carried on, and how bills and receipts were made out;*

*also to prove a valuation made of the stock of carts, horses, &c. employed in the business, and under what agreement.*

*To prove who were employed during particular years in paving certain streets, and to whom the profits were to belong, and as to any declarations made relative thereto.*

make any and what declaration or declarations respecting the same? Declare &c.

*To prove a partnership entered into in several trades, the shares of the parties interested, by whom the capital was provided, and the agreements made relative thereto, and as to the partnership monies; by whom stock was provided at the commencement of the partnership;*

*an account required of the partnership stock and the value thereof.*

5th. Whether or no did you the defendant I. C. and R. C. now deceased or either and which of you at any time or times and when respectively enter into copartnership with the bankrupt T. C. in the pleadings of this cause respectively named, in the several trades or businesses of — or in any and which of such trades or businesses? And if yea, In what shares and proportions were you the said I. C. and the said R. C. and the said bankrupt respectively interested in such trades and every of them, and what was the capital employed in such trades or businesses and every of them and by whom was the same provided, and what were the conditions and agreements between you in each and every of such trades with respect to the providing of capital and the bringing into and taking out monies from the said trades; and to whom did the buildings stock and utensils in each and every such trade belong at the commencement thereof, or by whom were the same provided, and what was then agreed between you with respect thereto? And set forth the particulars of all such buildings stock and utensils and the full true and utmost value thereof and of every part thereof, and what hath since become thereof? Declare &c.

*Interrogatories as to the sale of a ship, the monies received for freight, and the sums expended for seamen's wages and the ship's disbursements.*

Between H. D. - - - Plaintiff,  
and  
G. B. - - - Defendant.

Interrogatories exhibited on behalf &c:  
[usual title before a Master.]

*As to the sale of the ship, and the monies produced thereby.*

1st. Whether or no is the ship called the Sir E. H. in the pleadings of this cause mentioned sold? If yea, When and where and by whom and to whom and at what price was the same so sold; and have you or hath or have any other person or persons and who by your order or to your use or by the order or to the use of any other person or per-

sons and whom at any time or times and when respectively received the said purchase-money or any and what part thereof, or for what reason doth the same or any and what part thereof now remain unreceived and what hath become thereof, and if the said ship be not sold for what reason does the same remain unsold?

2d. Whether or no have you or hath or have any other person or persons and who by your order or to your use received any sum or sums of money for the freight of the said ship? If yea, Set forth a full true and particular account of all and every such sum and sums of money which hath or have been received by you or any other person or persons by your order or to your use for the freight of the said ship, and when respectively and for what and from whom and by whom all and every such sums were so received, and set forth also whether any and what sum or sums of money now remain due and owing in respect of the freight of the said ship, and from whom and for what all and every such sums are due and owing, and why the same respectively are unreceived?

*As to the monies received for the freight of the ship.*

3d. Whether or no have you paid any sums or sum of money for the seamens' wages and other charges in respect of the said ship forming a prior lien to the demand of the said complainant, or for any bills drawn by the captain of the said ship from the island of C. for the ship's disbursements? If yea, Set forth a full true and particular account of all and every the sum and sums of money which hath or have been so paid by you and when and to whom and for what all and every such sums were respectively paid and disbursed; Set forth &c.

*As to the sums paid for seamens' wages, and the ship's disbursements.*

*Interrogatories relating to tithes.*

In the Exchequer.

Between T. W. clerk, - - - - Plaintiff,  
and  
J. M. esq. - - - - Defendant.

Interrogatories exhibited on behalf of the said complainant before A. M. esq. Deputy Remembrancer of this honorable court to whom this cause stands referred, for the examination of the said defendant pursuant to the decree made in this cause bearing date the — day of —.

*To ascertain the lands occupied by the defendant.*

1st. Set forth a full true and particular account and description of all lands which have been holden and occupied by you within the parish of L. and the titheable places thereof since the — day of —, or are now holden and occupied by you; and if any of such lands have not been holden and occupied by you for the whole of the time since the said — day of —, then set forth for how long respectively such lands have been so holden and occupied by you; and set forth also the quantities of all and every of such lands, and how the same and every part thereof have at all times since the time aforesaid been respectively applied in cultivation; Set forth &c.

*To ascertain the produce of the lands in the occupation of the defendant, and the value thereof, except such parts in respect of which tithes have been rendered.*

2d. Set forth a full true and particular account of all and every the quantities of wheat barley oats peas beans and other grain and hay and hay-grass and other produce whatsoever which have in each year since the time aforesaid been reaped cut had taken or carried away from all and every such lands respectively, and the true and utmost value thereof respectively in each of the said years except as to such parts thereof in respect of which the tithes have been duly rendered to the complainant; Set forth &c.

*To ascertain the number of ewes and sheep depastured and the quantities of wool and number of lambs yielded by them, and*

3d. Set forth a full true and particular account of the number of ewes and other sheep which in each year since the time aforesaid have been kept and depastured on the said several lands, and also a full true and particular account of the number of such ewes and other sheep which



have in each of the said years been shorn and have produced lambs, and the quantities of wool and the number of lambs which such ewes and other sheep have in each of the said years yielded, and the true and utmost value of such wool and lambs respectively; and also a full true and particular account of the number of cows producing calves or milk, and the number of mares producing foals, and the number of sows producing pigs, and the number of hives of bees which in each of the said years since the time aforesaid have been kept by the said defendant on the said several lands, and the number of calves colts and pigs and the quantities of milk and honey which such cows mares sows and bees have in such of the said years respectively produced, and the true and utmost value of the same; Set forth &c.

4th. Set forth a full true and particular account of the number of sheep not producing lambs or wool within the said parish or kept after shearing-time, and of the number and kinds of all other barren and unprofitable cattle which from time to time in each year since the time aforesaid have been kept fed agisted and depastured on the said several lands, and the kinds of all such cattle and the number of each kind, and for how long respectively and on what lands in particular such sheep and other cattle were so kept fed agisted and depastured, and also a full true and particular account of the profits made by the agistment of such sheep and other cattle respectively so far as the same were agisted for hire, and of the value of the feed and agistment of such other sheep and other cattle respectively; Set forth &c.

5th. Set forth a full true and particular account of the potatoes turnip and other garden stuff and the apples pears cherries plumbs and other fruit which in each year since the time aforesaid have been taken gathered and received from the said several lands, and the true and utmost value of the same respectively; Set forth &c.

6th. Whether or no have you since the time aforesaid had or taken away any titheable matters and things whatsoever not hereinbefore mentioned and inquired after from the said several lands? If yea, Set forth a full true and particular account of such other titheable matters and things which in each year since the time aforesaid have been so had and taken by you, and the true and utmost value thereof respectively; Set forth &c.

*the number of cows, mares, and sows and hives kept, and the number of calves, colts and pigs, and quantities of milk and honey produced.*

*To ascertain the number of barren and unprofitable cattle depastured, and the value of the agistment thereof.*

*To ascertain the quantities of garden stuff and fruit gathered.*

*General inquiry as to other titheable matters.*

Between T. H. F. - - - - - Plaintiff,  
 and  
 T. P. and others, - - - Defendants.

Interrogatories exhibited on behalf of  
 the complainant before &c. [*the usual  
 title.*]

*To ascertain if the  
 defendants during a  
 particular period oc-  
 cupied any other and  
 what lands besides  
 those specified in the  
 decree.*

1st. Whether or no did any or either and which of you at any time between the month of — and the — day of — hold and occupy any lands within the rectory and parish of B. R. in the county of E. in the pleadings of this cause mentioned, or the titheable places thereof, other than the several lands which in the decree made in this cause are mentioned to be in your respective occupations, and which are hereinafter stated; that is to say, the lands called &c. in the said decree stated to be in the occupation of the defendant T. P.? If yea, Set forth respectively a full true and particular account and description of all such other lands, and when and for how long respectively between the times aforesaid the same were so held and occupied by you, and the quantities thereof respectively? And set forth also a full true and particular account of the respective quantities of the said several lands mentioned in the said decree to be respectively occupied by you.

*To ascertain the pro-  
 duce of the lands in  
 the occupation of the  
 defendants, and the  
 value thereof.*

2d. Set forth a full true and particular account of the purposes to which all and every the lands mentioned in the said decree and hereinbefore specified, and all other the lands in the said rectory and parish and the titheable places thereof which have been held and occupied by you respectively between the times aforesaid, have in each year between the said times been respectively applied in cultivation; And also a full true and particular account of all and every the quantities and qualities of the wheat barley oats peas beans and other grain and hay and hay-grass hemp flax and other produce whatsoever which have in each of the said years been reaped cut had taken and carried away from all and every the aforesaid lands respectively, and the true and utmost value thereof respectively in each of the said years, distinguishing particularly between the produce of the aforesaid lands specified in

the said decree and the other lands occupied by you respectively within the said rectory and parish and the titheable places thereof.

3d. Set forth a full true and particular account of the number of ewes and other sheep which in each of the years between the times aforesaid have been kept and depastured on the said several lands mentioned in the said decree and hereinbefore specified, and on all other lands within the said rectory and parish and the titheable places thereof, which have been held and occupied by you respectively between the times aforesaid; And also a full true and particular account of the number of such ewes and other sheep which have in each of the said years been shorn and produced lambs, and the quantities of wool and the number of lambs which such ewes and other sheep have in each of such years yielded, and the true and utmost value of such wool and lambs respectively, distinguishing as in the last interrogatory mentioned between the lands specified as aforesaid in the said decree and the other lands occupied by you respectively within the said rectory and parish and the titheable places thereof.

4th. Set forth a full true and particular account of the number of sheep not producing lambs or wool in the said rectory or parish or kept after shearing-time, and of the number and kinds of all other barren and unprofitable cattle which have in each of the years between the times aforesaid been kept fed agisted or depastured on the said several lands mentioned in the said decree and hereinbefore specified, and on all other the lands within the said rectory and parish and the titheable places thereof which have been held and occupied by you respectively between the times aforesaid, and for how long respectively such sheep and other cattle were so kept fed agisted or depastured; And also a full true and particular account of the profits made by the agistment of such sheep and other cattle respectively so far as the same were agisted for hire, and of the value of the feed and agistment of such other sheep and other cattle respectively, distinguishing as in the 3d interrogatory mentioned between the said lands specified in the said decree and the other lands occupied by you respectively within the said rectory and parish and the titheable places thereof.

*To ascertain the number of ewes and sheep depastured, and the quantities of wool and number of lambs yielded by them.*

*To ascertain the number of barren and unprofitable cattle depastured, and the value of the agistment thereof.*

*To ascertain the number of cows, mares, sows, and hives kept, and the number of calves, colts, and pigs, and the quantities of milk and honey produced.*

5th. Set forth a full true and particular account of the number of cows producing calves or milk and the number of mares producing foals and the number of sows producing pigs and the number of hives of bees which in each of the years between the times aforesaid have been kept by you respectively on the said several lands specified in the said decree and on all other the lands occupied by you respectively within the said rectory and parish and the titheable places thereof, and the number of calves colts and pigs and the quantities of milk and honey which such cows sows and bees have in each of the said years respectively produced and the true and utmost value of the same respectively, distinguishing as aforesaid.

*To ascertain the quantities of garden-stuff and fruit gathered in each year.*

6th. Set forth a full true and particular account of the potatoes turnips and other garden-stuff and the apples pears cherries plumbs and other fruit which in each of the years between the times aforesaid have been taken or gathered from the said several lands specified in the said decree, and all other the lands occupied by you respectively within the said rectory and parish and the titheable places thereof, and the true and utmost value of the same respectively, distinguishing as aforesaid.

*General inquiry after other titheable matters.*

7th. Whether or no have you or any or either and which of you between the times aforesaid had or taken any titheable matters and things whatsoever not hereinbefore mentioned and inquired after from the lands respectively occupied by you within the said rectory and parish and the titheable places thereof? If yea, Set forth a full true and particular account of such other titheable matters and things which in each of the said years between the times aforesaid have been so had and taken by you respectively and the true and utmost value thereof respectively, distinguishing as aforesaid.

*To prove an exhibit.*

8th. Look upon the paper or parchment-writing now produced or shown to or by you at this &c. Whether or no was the said produced writing at any time and when signed sealed and delivered or in any and what manner executed by any person and whom in your presence, and is your name set and subscribed as a witness thereto of your proper hand-writing? Declare &c.

9th. [*To prove the letters of institution; see the 3d interrogatory in p. 220, antea.*]

10th. [*To prove the mandate of induction; see the 2d interrogatory in p. 208, antea.*]

Between &c.

Interrogatories exhibited &c. [*usual title before a Master.*]

1st. Set forth a full and particular account of all the hay which your late father J. C. deceased had in each year from — in the year — to — in the year — both inclusive from grass cut in each on lands in his occupation within the parish of T. in the county of G.; How much per load was the hay which the said J. C. so had in each of such years worth to be sold, and how much was the whole of such hay which the said J. C. had in the parish in each of such years worth at an average and taking one year with another? Set forth the matters inquired after according to the best of your remembrance information and belief, and as fully and as near as you are able from your memory or belief or otherwise.

2d. Set forth a full and particular account of the potatoes garden-stuff and fruit which the said J. C. had plucked gathered and received in each year, and the quantity of each sort in each year at an average and taking one year with another; And set forth the full value of each of such kinds of produce which the said J. C. so had &c. on such lands in each of such years at an average and taking one year with another; Set forth &c.

3d. Set forth a full and particular account of all the barren and unprofitable cattle which the said J. C. from time to time had kept fed or depastured on any lands in his occupation within the said parish of T. from the year — to the year — both inclusive, and the kinds of all such cattle and the number of each kind and how long they were respectively so kept fed and depastured on any such lands, and on what lands in particular the same were so from time to time kept fed and depastured respectively, and the number of each of such kinds of cattle which the said J. C. so kept fed and depastured on any such lands in each year at an average and taking one year with another; What was the value of the feed or agistment of each of such kinds of cattle on such lands in each year, and what was the value of the feed or agistment of them at an average and taking one year with another? Set forth &c.

*To ascertain the quantity of hay grown during particular years by the witness's deceased father, and the value thereof.*

*To ascertain the quantity of garden-stuff and fruit gathered in each year and the value thereof.*

*To ascertain the number of barren and unprofitable cattle depastured, and the value of the agistment thereof in each year.*

*To ascertain the number of persons in the deceased's family during particular years.*

4th. What number of persons at the most of above the age of — years had the said J. C. in his family in the parish of T. in each year from the year — to the year — both inclusive; or what number of persons had the said J. C. in his family in the said parish in each of such years at an average and taking one year with another? Set forth &c.

*To ascertain the quantities of milk had daily, and the value thereof.*

5th. Set forth how many meals of milk the said J. C. had in the said parish of T. in each morning and also in each evening in the several years from the year — to the year — both inclusive, and taking one morning with another and one evening with another; and the quantity of milk which was in each morning's meal and also in each evening's meal at an average &c.; And what was the value of each of such mornings meals during such times and each of such evenings meals during such times at an average and taking &c.; Set forth &c.

*To ascertain if the tithes of any articles mentioned in the preceding interrogatories were delivered to or set out for the plaintiff and how and the particulars thereof, and whether in as good plight and condition as originally produced.*

6th. Did the said J. C. or any person or persons on his behalf at any time or times deliver to or for the use of the complainant, or set out in any and what manner any quantity of each or any or either and which of the several kinds of titheable matters inquired after in each or any either and which of the 1st, 2d, and 5th interrogatories as or for the tithe thereof or of any part thereof respectively? If yea, Set forth all the several kinds which were so delivered, and the quantities of each kind, and when and by whom and to whom the same were respectively so delivered and in what manner, and as and for the tithes of what particular quantity of such respective kinds of titheable matters and things, and whether all the particulars were so delivered or set out in as good plight and condition as the same were when the same were originally produced, or whether any and what particulars or kinds thereof and what quantities of each were then in any and what degree and in what manner and by what means spoiled or damaged or in a worse condition than when the same were originally produced; Were all the particulars which were so set out accepted, or which of them was refused to be accepted and for what reason? Set forth &c.

*Also to prove whether the particulars set out were accepted, and why not.*

*To ascertain whether compensation was made to the plaintiff for his tithes or Easter offerings.*

7th. Did the said J. C. or any and what person on his behalf at any time or times pay to the complainant or any and what person or persons for his use or on his behalf any sum or sums of money in or towards satisfaction of or

for the tithes of or for all or any and which of the titheable matters and things inquired after in the 1st, 2d, 3d, and 5th interrogatories, and whether or not in or towards satisfaction of or for the said J. C.'s Easter offerings? If yea, Set forth the particulars of all the sums which were so paid, and when and about what time or times and by whom and to whom and for what in particular all such sums were respectively so paid; Set forth &c.

In the Exchequer.

Between T. H. clerk, - Plaintiff,  
and  
S. A. - - - - Defendant.

Interrogatories to be exhibited on behalf of the said complainant before A. M. esq. the Deputy to his Majesty's Remembrancer of this honorable court, for the examination of the said defendant pursuant to the decree made on the hearing of this cause bearing date the — day of —.

\* 1st. Set forth a full and exact account of all and each of the several articles liable to the payment of small tithes grown gathered or consumed by you or any person or persons for your use since the — day of — up to the present time upon off or from the 57 acres of land in the parish of G. in the pleadings of this cause mentioned to be in your occupation and described by you in your answer as having been part of the dissolved monastery of N. in the county of B., and also upon off or from the 186 acres of land in your occupation in the said answer described as part of your lands commonly called or known by the name of Berry Farm, distinguishing the particular quantities of the respective articles grown gathered or consumed in each year, with the yearly value of such respective articles.

\* 2d. Have you kept any and what book or books or any and what papers or memorandums of the produce of the small tithes of the several titheable articles arising growing and renewing on the said 57 acres and 186 acres of land

*To ascertain the several articles liable to the payment of small tithes grown or consumed, and the value thereof.*

*To ascertain whether the defendant has kept any books or accounts of the produce*

*of the small tithes of the titheable articles grown and consumed by him, and what has become of such books.*

within the respective years — and this present year — or any or either and which of them? If yea, Where is or are such book or books papers or memorandums, and when was or were the same last in your custody or possession? And set forth the title or description of such book or books papers or memorandums so as to enable the said complainant to call for the production thereof.

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*An interrogatory for the examination of a person pro interesse suo.*

Have you any and what estate right or interest in or to the premises in the pleadings of this cause mentioned situate in —, or the rents and profits thereof, or in any and what part or share parts or shares thereof? If yea, Set forth the nature and extent of such your estate right or interest, and how and in what manner you make out or derive the same?

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SECT. IV.

FORMS OF INTERROGATORIES FOR THE CROSS-EXAMINATION  
OF WITNESSES (1).

In Chancery.

Interrogatories to be administered for the cross-examination of witnesses to be produced sworn and examined on the part of the plaintiffs in a certain cause now depending and at issue in the High Court of Chancery, wherein the Most Noble Charles Duke of D. and J. S. are complainants, and E. C. spinster is defendant, on the part and behalf of the said defendant.

\* 1st. Did you act as the auctioneer of and put up to sale by public auction the premises in the pleadings in this cause mentioned? If yea, Did you prepare or cause to be prepared the printed particulars of sale by which the said premises were sold, and by whom and by whose direction were such printed particulars of sale prepared, and by whose direction and upon whose account and for whom did you prepare or cause the same to be prepared? Did you not or did not your assistants or some other agent of the said complainants and who by name inform the company

*As to witness having acted as auctioneer, and prepared the particulars of sale;*

*As to representations made by him or the plaintiff's agents at the sale, that the premises were let on lease,*

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(1) An adverse party may cross-examine a witness to the same point to which he has been examined in chief, but not to any new matter; *Dean and Chapter of Ely v. Sir Simcon Stewart*, 2 Atk. 44.

A party who examines a witness is bound to keep him in town for forty-eight hours after his production at the seat of the adverse clerk in court; and if cross-interrogatories are left with the examiner within the forty-eight hours, the party must keep the witness in town till his cross-examination is finished. Where a witness left London before the forty-eight hours were expired, the party producing him was ordered to bring him back at his own expense, or the examination in

and as to his having produced an instrument purporting to be the lease or a copy of the lease referred to in the particulars of sale, and also as to comments made by him on the covenants therein contained.

present at the time of the sale of the said premises or represent to them that the said premises were let on lease as stated in the said particulars of sale, and did you in any and what manner explain to them such statement contained in the said particulars of sale? Did you not produce and exhibit to the said company present at the time of the said sale a lease or some paper-writing purporting to be a lease of the said premises, and was or not the same produced and shown to the said company by you or by your assistants or some other agent of the said complainants and whom by name, as the lease or copy of the lease of the said premises referred to in lot 2 of the said particulars of sale? Did you not or did not your assistants or some other agent of the said complainants and who by name read or state from the said paper-writing or alleged or pretended lease to the said company present at the time of the said sale, the terms and conditions under which the said premises in the pleadings of this cause mentioned to be comprised in lot 2 of the said particulars of sale were so stated by you or such other person or persons to be on lease? Did you not or did not your assistants or some other agent of the said complainants and who by name at the time of the said sale comment upon the covenants and conditions contained in such pretended or alleged lease, and represent the same as being highly advantageous to a purchaser and more beneficial to a landlord than what are usually introduced into leases in general, and particularly did you not or did not such person or persons represent or

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chief to be suppressed; *Whittuck v. Lysaght*, 1 Sim. & Stu. 446, 8. See the 25th of the New Orders in Chancery, *postea*.

If a witness refuse to be cross-examined it is a cause of exception to his testimony, and the court on motion will suppress his depositions *ex parte*; *Wyatt's Prac. Reg.* 419; where a witness who had been examined on the part of the plaintiff secreted himself before he could be cross-examined, the plaintiff was ordered to procure him to attend to be cross-examined within a fortnight, or in default, his deposition on the plaintiff's part to be suppressed; *Flowerday v. Collett*, 1 Dick. 289.

Cross-examining a witness is no waiver in equity of an objection on the ground of interest to the competency of such witness; *Moorhouse v. De Passou*, Coop. 300; S. C. 19 Ves. 433; and see note (1) to *Stokes v. M'Kerral*, 3 Bro. Ch. Ca. by Belt, p. 228; *Vaughan v. Worrall*, 3 Swanst. 395.

state to the said company at the time of the said sale, that the tenant of the said premises was bound to keep the same in repair, and was not entitled to timber from off the same premises for that purpose, or to that or the like or some other and what effect? Declare &c.

\* 2d. Did not Mr. A. the solicitor for the said defendant apply to you for a copy or abstract of the alleged lease under which the premises described as lot 2 in the pleadings in this cause mentioned were stated to have been let, and when or at what time was such application made? Did you not at the time of such application inform the said Mr. A. for the first time that no such lease had been then granted, and had any such lease in fact been then granted? Declare &c.

\* 3d. Did you not and when deliver to the said Mr. A. as the solicitor for the said defendant a draft or copy of a draft lease purporting to be the same as was produced by the auctioneer or agent on behalf of the said complainants at the time of the said sale, or what did you represent the same to be at the time, and what passed between you and the said Mr. A. relative to such draft lease? Did not the said Mr. A. return such draft lease to you with some and what observations thereon, and did you not afterwards and when return the same to him with several and what alterations made therein? Declare &c.

\* 4th. Did not the intended lessee of the said premises make some and what objections to the said proposed draft lease, and did not considerable negotiations take place between you and the said intended lessee before the terms of the said proposed draft lease were agreed upon and settled with him? Did not the indenture of lease which was ultimately executed by the said intended lessee contain several and what clauses different and in what respect from the said draft lease when first delivered to the said Mr. A., and also different and in what respect from such draft lease when last delivered to the said Mr. A.? Declare &c.

\* 5th. What is the date of the said indenture of lease? When and at what time was the said indenture of lease of the said premises and the counterpart thereof executed by the lessor and the lessee thereof respectively? And when or at what time did you give or cause notice thereof to be given to the said Mr. A. or to his copartners as the solicitor for the said defendant or to either and which of

*As to application being made to witness by the defendant's solicitor for a copy of the alleged lease, and whether the same had in fact been granted.*

*As to witness having delivered to the defendant's solicitor a draft lease purporting to be the same as was produced at the sale, what passed relative thereto, and as to the alterations which were made by witness therein.*

*As to the objections made by the intended lessee to the proposed draft lease, and the negotiations which took place in consequence thereof, and in what respect the lease when executed differed from the draft when first delivered.*

*As to the date and time of execution of the lease and when notice thereof was given to the defendant's solicitor.*

them, and deliver or cause to be delivered to him or them a copy of such lease? Declare &c.

*The concluding general interrogatory.*

\* 6th. Do you know any other matter or thing not inquired after by these interrogatories which may tend to the benefit or advantage of the said defendant in this cause? If yea, Set forth the same fully and at large as if you had been thereto particularly interrogated.

*As to the knowledge of a steward or land-agent of the value and nature of coal mines, in what capacity he was employed by the deceased owner thereof, and as to his occupation in life previously thereto.*

\* Was the said L. N. capable at the time when the said agreement was made of forming an accurate judgment or competent opinion of the value of the coal mines or beds of coals under the lands and grounds in the said memorandum of agreement and release comprised; And had he as you do for any and what reason know and believe any and what knowledge of and practice in such matters or in any matters relating to coal mines, and had he ever and when been employed in any coal mines or in or about concerns or business of that description, or was he in any respect acquainted therewith, and had he in any and what manner been in any way obtaining knowledge and information of the nature and value of coal mines, and in what capacity or character was he employed by the said Sir T. B. deceased, and especially at the time when the said memorandum of agreement and release were respectively made and thenceforth to the time of his decease, and what had been his business or occupation previously to his being so employed by the said Sir T. B.? Declare the truth and your utmost knowledge remembrance and belief herein.

*Whether a deed was read over to the grantor previously to his executing the same, and whether he was aware of the terms thereof or the effect thereof, and the mode of payment of the consideration-money.*

\* Upon what occasion of and prior to the execution of the said release by the said Sir T. B. was the same read over by or to him, and by whom by name was the same read over to him? Was the said Sir T. B. as you do for any and what reason know or believe aware of the terms and conditions of the said release, and in particular of the number of acres of coal thereby conveyed and the mode of payment for the same, and that the same might be gotten as quickly as possible, and that the payment for the same would not be completed for 276 years or for any and what number of years, and that according to the terms of the said release he would be a trespasser if he entered the pits

of the said company to ascertain that the iron stone and upper bed of coal were not damaged or carried away, and that the coals then under the lands then occupied by the before-named S. F. &c. or any and which of them were therein comprised? Set forth the several matters inquired after by this interrogatory fully and at large according to the best and utmost of your knowledge remembrance information and belief, together with the means of knowing and reasons for believing the same, and the truth declare &c.

\* If the said Sir T. B. had been aware of all or any and which of the circumstances in the last preceding interrogatory mentioned or that the said upper bed was intended to be included so as to destroy and lock up the iron-stone, would he as you do and for any and what reason know or believe have executed the same? And did he not execute the same in confidence that the said release had been prepared with a view to the fair and equal benefit of both parties, and in ignorance that such terms and conditions as in the preceding interrogatory mentioned were contained therein, and if not, why not? And had not the said Sir T. B. a high opinion of the said J. H. and J. J. or of one and which of them, and did he either read over the whole of the said release or any and what part thereof himself or give directions that any other person should do so for him before he executed the same? And if yea, Whom did he direct to read over the whole of the said release or any and what part thereof, and to whom and in whose presence were such directions given? Set forth &c. [*conclude as in the preceding interrogatory.*]

*As to a party having executed a deed without its having been examined by him or on his part and in confidence that it had been fairly prepared.*

\* What was the age of L. N. at the time when the memorandum of agreement in the pleadings in this cause mentioned was made, and what was the state of his bodily health and mental faculties at that time; had he not been twice or how often stricken with palsy previously thereto, and was he not thereby to a great or to some and what extent or from some and what other cause inefficient or incapacitated to transact business requiring knowledge and skill, or requiring the exercise of mental faculties to transact the same, and in particular was not the said L. N.

*As to the age and state of mental faculties of a steward or land agent, and whether that from attacks of palsy he was not incapacitated or unequal to enter into a contract relating to coal mines, with a view to securing the interest of his employer.*

unfit and unequal to treat for the sale of the said coal mines and for making proper stipulations and provisions for carrying such treaty into effect? Declare the truth and your utmost knowledge remembrance information and belief herein.

*As to the character of the hand-writing of certain letters, (written by a steward or land agent), and whether the same was not more feeble than at an earlier period, and whether he was not then in fact in a feeble state of health.*

\* Were you not acquainted with the hand-writing of the said L. N. for a long and for some and what period of time in particular before the two letters dated respectively the 31st day of October 1789 and the 18th day of December in the same year, marked respectively with the letters (C) (D) and which have been produced and shown to you were written or do bear date, and is not the manner or character of hand-writing of the same respectively a different character and manner from that wherein the said L. N. wrote at some and what earlier period during the time you have known his hand-writing, and in particular is not such character or manner of hand-writing much more unsteady and indistinct and more scrawling and so far as you can judge more feeble than the character or manner of the said L. N.'s hand-writing at some and what earlier period in particular of your acquaintance with him, and do you not know or believe and for some and what reason that the said L. N. was in a feeble state of health at the time when the said two letters do respectively bear date? Declare the truth of the matters aforesaid, together with your utmost knowledge and belief herein and your reasons for the same.

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Interrogatories to be administered for the cross-examination of witnesses to be produced sworn and examined on the part of the plaintiff in a certain cause now depending and at issue in the High Court of Chancery wherein M. H. is complainant and J. H. and E. his wife, E. R. and H. L. and J. H. an infant are defendants, on the part and behalf of the said defendant J. H.

*As to the due execution of a will.*

\* 1st. Are you a subscribing witness to the pretended or alleged last will and testament of J. H. deceased in the pleadings of this cause named, and which has been exhibited to you

on your examination on the behalf of the said plaintiff? If yea, Did the said J. H. sign the said pretended or alleged last will and testament and publish the same as his last will and testament in your presence and in the presence of the other subscribing witnesses thereto or either and which of them as you know, and were you all present together with him when he signed and published the same as his last will and testament or how else? And did you and the other subscribing witnesses to the said pretended or alleged will respectively or either and which of them sign or set your or their name or names as subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H. or how else; and did not you or the subscribing witnesses to the said pretended or alleged will or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and at what time of the day and when was the said pretended will signed and published by the said J. H. and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged will, and by whom were you requested to be present at the signing and publishing thereof and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged will? And if yea, What has become thereof? Declare &c.

\*2d. Are you a subscribing witness to the alleged writing or memorandum at the bottom of the pretended or alleged last will and testament of J. H. deceased in the pleadings of this cause named and which has been exhibited to you on your examination on behalf of the said plaintiff, and alleged to be a re-execution and republication thereof by the said J. H. deceased? If yea, Did the said J. H. sign the said pretended or alleged writing or memorandum in your presence and in the presence of the other subscribing witnesses thereto or either and which of them as you know, and were you all present together with him when he signed and published the same as a re-execution and republication of his last will and testament or how else? And did you and the other subscribing witnesses to the said pretended or alleged writing or memorandum respectively or either and which of them sign or set your or their name or names as

*As to the republication of the will.*

subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H. or how else? And did not you or the other subscribing witnesses to the said pretended or alleged writing or memorandum or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and at what time of the day and when was the said pretended or alleged writing or memorandum signed and published by the said J. H. and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged writing or memorandum, and by whom were you requested to be present at the signing and publishing thereof and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged writing or memorandum? And if yea, What is become thereof? Declare &c.

*As to the sanity and mental capacity of the testator.*

\* 3d. How do you know and what particular reason have you to believe that the said J. H. was of sound and disposing mind memory and understanding at the time when he signed and published the said pretended or alleged will or writing or memorandum? And was he or not or might he or not for any thing you know or have any reason to believe to the contrary be at the time of unsound and undisposing mind memory and understanding and incapable of making a will, and how did you consider him to be in that respect? And in what state of health of body and of what age was he at the time? And what opportunity had you to judge of his sanity or insanity or of his capacity or incapacity to make a will or conduct his worldly affairs? And did or not you or the other attesting witnesses respectively or any or which of them converse with him at or before or after the time when you say he signed and published the said pretended or alleged will or writing or memorandum? And if yea, Was his conversation sensible and indicative of his capacity to make a will and manage his concerns or how else? And had you or not any acquaintance or intimacy with him for any and what length of time before or after he as you say signed and published the said pretended or alleged will or writing or memorandum? And was he or not in some and what manner as you know or believe and why influenced and prevailed upon and by whom



to make the said pretended or alleged will or to sign or publish the said alleged writing or memorandum? And was he or not under great mental imbecility from his age and infirmities? Declare &c.

\*4th. Do you know any other matter or thing not inquired after by these interrogatories which may tend to impeach the validity of the said pretended or alleged will or writing or memorandum to the benefit of the said defendant J. H. in this cause? If yea, Set the same forth.

*The concluding general interrogatory.*

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*Title of interrogatories for the cross-examination of a party examined pro interesse suo.*

Between W. A., - - - - Plaintiff,  
and  
H. S. &c. &c. - - Defendants.

Interrogatories exhibited before W. W. P. one of the Masters of the High Court of Chancery for the cross-examination of the above-named defendant W. O. pursuant to an order made in this cause bearing date the — day of —, whereby it was ordered that the said defendant W. O. be at liberty to go before Mr. P. one of the Masters of the said court, and be examined *pro interesse suo*.

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*Interrogatories to the competency of witnesses, exhibited to them on their cross-examination (2).*

*As to witness being interested in the event of the suit, and whether he is not defendant in an action of trespass in which the title to the lands in question is depending, whether a verdict was not found for the plaintiffs at law, and whether execution is not stayed by injunction.*

\* Are you not interested in all or some and which of the matters in issue between the parties or some and which of them in this suit, and shall you not and in some and what manner lose or gain by the event thereof, and especially are you not the defendant in an action of trespass or in some and what action at law wherein the defendants in this cause or some and which of them are plaintiffs, and wherein is or was at issue or depending either mediately or immediately the right and title of the complainants and defendants in this cause or of some and which of them to the same beds or strata of coal, the right and title whereto is litigated and in issue in this cause, or to some and which of the same beds or strata, or to some or what other beds or strata of coal, and has not a verdict been found in the aforesaid action at law in favor of the plaintiffs therein, and is not execution stayed therein by the order and injunction of the High Court of Chancery obtained in this cause upon the application of the complainants or of some and which of them therein? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

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(2) If a witness is interested and is known to be so previously to his examination, a general interrogatory should be framed requiring him on his cross-examination to answer whether or no he is interested; and if he untruly denies that he is interested, the party affected by his evidence may discredit the witness by examining other witnesses as to the truth of that proposition; 2 Madd. Ch. Pr. 422; (there may however be a general interrogatory to every witness whether he has any interest, *Purcell v. Macnamara*, 3 Ves. 325, 2d edit.). If however a party has omitted to examine a witness as to his interest in the suit, he may *before publication* move on affidavit for leave to re-examine the witness as to the fact of interest; see *Vaughan v. Worrall*, 2 Madd. Rep. 322, 323; which case was affirmed on appeal, 2 Madd. Ch. Pr. p. 422, note (t).

If a man is examined as a witness and is at his examination disinterested, but afterwards becomes interested and either plaintiff or defendant in the cause, his depositions may be read; *Goss v. Tracey*, 1 P. Wms. 238; *Glynn v. The Bank of England*, 2 Ves. sen. 42; *Cope v. Parry*, 2 Jac. & W. 538, 9.

\* Have you not lately and since this suit was instituted, and at what time in particular, become a co-partner together with the before named several complainants or some and which of them in the establishment or concern called or known by the name or style of the "L— M— Company" and in the pleadings mentioned, and have you not thereby or by some and what other means acquired, and have you not now and do you not and for what reason claim to have a beneficial interest or some and what interest in the beds or strata of coal the right and title whereto is litigated in issue between the complainants and defendants or some and which of them in and by this suit, or a beneficial or some and what interest in some and which of the said beds or strata of coal or in some and what parts thereof, or in some and which of the several matters whereto this suit has relation? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

*As to whether witness has not become co-partner with the plaintiffs in the concern carried on by them, and whether he does not claim a beneficial interest in the lands the title whereto is in issue between the parties.*

\* Shall you not be in some manner a gainer or be otherwise affected in case the will of the said J. H. should be established and carried into execution? If so, Set forth how and in what manner or in what respect you are likely to be a gainer or affected thereby; Declare &c.

*As to whether witness has not an interest in the establishment of the will in question.*

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*Interrogatories for the examination of a witness on the voir dire as to his being interested (3).*

[For a form of title, vide antea, No. 11. p. 151.]

\* 1st. Have you any and what interest in the performance or non-performance of the agreement in the pleadings of this cause mentioned? And if yea, Set forth the nature of such your interest and how the same arises; Declare &c.

*To ascertain what interest witness has in the performance of the agreement in question.*

\* 2d. Have you any and what interest in the determination or decision of this cause, or can you by any and what means gain or lose by the event of the said suit? Declare &c.

*As to his interest in the event of the suit.*

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(3) See *Stokes v. McKerral*, 3 Bro. Ch. Ca. 223; S. C. cited by the Vice-Chancellor in *Vaughan v. Worrall*, 2 Madd. Rep. 328.

*As to any obligation he may be under to pay or secure the defendant's costs.*

\* 3d. Are you under any and what honorary or legal obligations and to whom to pay or secure or to see paid or secured the costs or any part of the costs of the said defendant which she has or may incur in this suit or be liable by decree or otherwise to pay? Declare &c.

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*Articles to discredit witnesses (4).*

Articles exhibited by A. B. complainant in a certain cause now depending and at issue in the High Court of Chancery wherein the said A. B. is complainant and C. D. defendant, to discredit the testimony of E. F., G. H., and J. K. three witnesses examined before L. H. esq. one of the examiners of the said court on the part and behalf of the said defendant (5).

1st. The said A. B. doth charge and allege that the said E. F. hath since his examination in the said cause owned and acknowledged that he is to receive or be paid and also

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(4) A party is at liberty to examine a witness by general interrogatories as to the credit of the witness, and in contradiction of such facts sworn to by the witness *as are not material to what is in issue in the cause*; *Purcell v. Macnamara*, 8 Ves. 327, 2d edit., and the cases referred to in note (31), *ibid*.

Examinations to the credit of witnesses can only be by order upon special application with notice, whether before or after publication; but though it is a special motion, it is not necessary in all cases that it should be accompanied by affidavits, see *Watmore v. Dickinson*, 1 Ves. & B. 267, and note (b), 2 Madd. Ch. Pr. 423. If evidence as to the credit of a witness is taken upon the examination in chief it may be suppressed as impertinent; *Mill v. Mill*, 12 Ves. 409; 2 Madd. Ch. Pr. 423, 4. There is no precise time within which the examination as to credit is to take place; *Piggott v. Croxhall*, 1 Sim. & Stu. 467; in which case the plaintiffs were allowed to examine by general interrogatories (in support of articles) as to the credit of the witnesses, and also as to the fact of their having previously to their examination made declarations contrary to their depositions, the Court being of opinion that the fact of such declarations was not material to the issue in the cause.

Forms of titles of interrogatories to discredit the testimony of witnesses will be found in pages 151, 2, *antea*.

(5) See 2 Newl. Ch. Pr. p. 317.

that he doth expect a considerable reward gratuity recompense or allowance from the said defendant in case the said defendant recovers in the said cause or the said cause be determined in his favor, and that the said E. F. is to gain or lose by the event of the said cause.

2d. The said A. B. doth charge and allege that the said G. H. and J. K. are persons of bad morals and of evil fame and character, and that they are generally reputed and esteemed so to be, and that the said G. H. and J. K. are persons who have no regard to the nature or consequences of an oath, and that they are persons whose testimony is not to be credited or believed.

*The title must be varied if the depositions are taken by commission; As thus:*

Articles exhibited by A. B. complainant in a certain cause depending and at issue in the High Court of Chancery wherein the said A. B. is complainant and C. D. defendant, to discredit the testimony of E. F. and G. H. two witnesses examined by virtue of a commission issued out of the said court to J. K. and others directed for the examination of witnesses in the said cause upon certain interrogatories exhibited before them for that purpose, and which said witnesses were examined in the said cause on the part and behalf of the said defendant.

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## CHAPTER XVI.

## FORMS OF ORDERS (1).

I. *Order to amend an Answer.*

Forasmuch &c. that the defendant since putting in his answer to the plaintiff's bill hath discovered that in the title to his said answer he hath made a mistake in the christian name of the plaintiff by calling him — instead of —, It is therefore prayed that the defendant be at liberty to take his said answer off the file and amend the same in the title thereof by naming the plaintiff — instead of —, which is ordered accordingly, and that after such amendment the defendant do re-swear the said answer.

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(1) As by the practice of the Registers two days elapse before an order is delivered out by the Register after it has been made, the solicitor should, whenever it is an object to save that time, as where an order has been made to dissolve an injunction *nisi*, or to confirm a report *nisi*, draw up the order himself on the same day on which it is obtained, and carry it to the Register's office to be passed and entered immediately. So also where an order for the transfer of stock has been made, two days may be saved by the solicitor drawing out the Register's certificate (without which the Accountant-General refuses to act), and carrying it to the Register to be signed; the following is a common form of such certificate :

To the Accountant-General of }  
 the Court of Chancery. }

Morris v. Johnson.

Pursuant to an order made in this cause, bearing date the — day of —, £— (*in words at length*) bank three pounds per cent. annuities, being one-third part of the sum of £— like three pounds per cent. annuities standing in your name in trust in this cause, are to be transferred unto the defendant Samuel Johnson.

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II. *Order that bonds of submission to arbitration be made an order of court.*

Whereas the plaintiff and defendant have severally entered into bonds &c. [*reciting the bonds*] which said bonds were duly executed as by the affidavit of — a subscribing witness thereto now produced and read appears, It is on the motion of — ordered that the said bonds of submission entered into as aforesaid be made an order of this court, and that the said parties do submit to and be finally concluded by the award which the said arbitrators shall make pursuant to the said submission according to the statute in that case made and provided.

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III. *Order directing that an agreement be made an order of court.*

Whereas by articles of agreement bearing date &c. it is recited and agreed as follows; (that is to say), [*setting forth the instrument verbatim*]; Now upon motion &c. and upon producing one part of the said articles under the respective hands and seals of —, and praying that the same may be made an order of this court, It is ordered that the said agreement be made an order of this court, to be observed and performed by the parties thereto according to the tenor and true meaning thereof, Mr. — of counsel for — consenting thereto.

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\* IV. *Order for payment of the plaintiff's costs, part to the executors of his deceased solicitor, and other part to his present solicitor; the deceased solicitor before his death obtained an order for taxation, but died before the same was completed.*

Vice Chancellor.

Wednesday the — day of —, in the 6th year &c. 1825.

Between J. S. on behalf of himself and all other  
the creditors of B. R., deceased, Plaintiffs,  
J. R., M. D., and others, - Defendants.

Recital of petition,

stating an order made on further directions, directing a reference to the Master to tax the plaintiff's subsequent costs, and payment thereof to his solicitor.

Death of the solicitor before the taxation, having made a will and appointed two of the petitioners his executors, who proved the will, and that the other petitioner has since acted as the plaintiff's solicitor, and brought the suit to a close ;

Statement of the amount of the costs taxed, and apportionment thereof between the petitioners ;

Whereas A. C. and C. R. and C. C. did on the 26th day of July 1825 prefer their petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that by the order made on the hearing of this cause on further directions and bearing date the 1st day of August 1823, It was amongst other things referred to the Master to tax the parties' costs subsequent to the last taxation thereof, and what should be taxed for such subsequent costs of the plaintiff should be paid by the Accountant-General of this court to Mr. T. O. or his solicitor; That before the completion of the said suit and taxation of costs the said Mr. T. O. died, having duly made his will and thereby appointed the petitioners A. C. and C. R. executors thereof, who have since duly proved the same in the Prerogative Court of Canterbury; and the petitioner C. C. since his death has acted as the solicitor of the said plaintiff, and prosecuted the said suit to a close; That the said taxation of costs has lately been completed, and the costs of the said plaintiff amount to the sum of £245 as appears by the said Master's report, and that such part thereof as had accrued in the said T. O.'s lifetime and belong to his estate is the sum of £183 which the first-named two petitioners are entitled to receive and be paid as such executors as aforesaid, and the residue thereof amounting to the sum of £62 the petitioner C. C. is entitled to receive and be paid as the said plaintiff's present solicitor in the said cause, but the said Accountant-General cannot pay the same to the petitioners without the



order of this court; And therefore praying that instead of the direction in the said order dated the 1st day of August 1823 to pay out of the sums therein mentioned what should be taxed for the plaintiff's subsequent costs to Mr. T. O. his solicitor, the said Accountant-General might be directed to pay to the petitioners A. C. and C. R. or one of them as such executors as aforesaid, the sum of £183 part of the said plaintiff's said subsequent costs, and also to pay to the petitioner C. C. the said plaintiff's present solicitor the sum of £62 the residue thereof; Whereupon all parties concerned were ordered to attend his Lordship on the matter of the said petition, and counsel for the said petitioners this day attending accordingly, upon hearing the said petition, the said order dated the 1st day of August 1823, the Master's report dated &c., the probate of the will of the said T. O. dated &c. read, and what was alleged by the counsel for the petitioners; THIS COURT DOETH ORDER that instead of the direction in the order made in this cause bearing date the 1st day of August 1823 to pay out of the sums therein mentioned what the Master should tax for the plaintiff's subsequent costs of this suit thereby directed to be paid to Mr. T. O. the plaintiff's then solicitor, and which costs have since been taxed by the said Master at the sum of £245, the sum of £183 part of the plaintiff's said subsequent costs be paid to the said petitioners A. C. and C. R. or one of them as such executors as aforesaid, and that the sum of £62 the residue thereof be paid to Mr. C. C. the plaintiff's present solicitor; And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this court in that case made and provided.

and praying that instead of the direction in the former order, the Accountant-General might be directed to pay £183 to the executors of the deceased solicitor, and £62 to the present solicitor.

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V. *Order for a sheriff's officer to attend with a sutor whom he had arrested on his returning from court.*

Whereas Mr. L. as counsel for R. A. B. this day moved the Right Honorable the Lord High Chancellor of Great Britain that the said R. A. B. who on the — day of — was arrested by J. L. the officer for the sheriff of Middlesex in an action at the suit of S. H. gent. might be discharged out of the custody of the said sheriff, for that the said R. A. B. at the time of such arrest was returning home from this court after his attendance as plaintiff on a motion made in a cause depending therein wherein he was plaintiff and H. and others were defendants, or that the said J. L. might

bring the said Mr. B. into this court, Whereupon and upon hearing an affidavit of the said R. A. B. read, HIS LORDSHIP DOETH ORDER that the sheriff for the county of M. do attend with the said R. A. B. in this court to-morrow on the sitting thereof.

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VI. *Order for the discharge of a suitor who had been arrested on leaving the court.*

Complaint being this day made to the Right Honorable the Master of the Rolls by Mr. — as counsel for the plaintiff in this cause that on yesterday the — the plaintiff E. H. on leaving this court when this cause was partly heard was arrested, and the said plaintiff E. H. being present in court in custody of W. J. A. one of the officers of the sheriff of Middlesex who arrested her, and the said plaintiff being sworn and examined and deposing that she is one of the plaintiffs in this cause, and that on her return and before she got home she was arrested by the said W. J. A. by virtue of a warrant from the sheriff of Middlesex at the suit of the defendant D. R. for a debt of £—, and the warrant being produced in court, IT IS THEREUPON ORDERED that the said plaintiff E. H. be forthwith discharged out of custody.

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VII. *Order that the plaintiff may make his election to proceed at law or in equity.*

Forasmuch as this court was this present day informed by Mr. — being of the defendant's counsel that the plaintiff doth prosecute the said defendant both at law and in this court for one and the same matter, whereby the defendant is doubly vexed; IT IS THEREFORE ORDERED that the plaintiff do within eight days after notice to his attorney at law and clerk in court make his election in which court he will proceed, and if he shall elect to proceed in this court, then his proceedings at law are hereby stayed by injunction, but in default of such election by the time aforesaid, or if the plaintiff shall elect to proceed at law, then the plaintiff's bill is from thenceforth to stand absolutely dismissed out of this court with costs to be taxed by Mr. — one of the Masters of this court.

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VIII. *Order for the separate examination of femes covert as to the application of a sum of money.*

Upon motion &c. IT IS ORDERED that the said — the wife of — and — the wife of — do severally attend — or any — of them, to be solely and secretly examined by them separate and apart from their said husbands how and in what manner and to what uses they are willing and desirous that — may be paid and applied; and the said — or any — of them who shall take such examinations are to take the same in writing signed by the said — respectively, and to certify the same in writing under their hands and the signing of the said — and such certificates are to be verified by affidavit; and upon the return of such certificates such order shall be made as shall be just.

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IX. *Order that a defendant, a foreigner residing abroad, may answer in his own language, and directing that the answer be translated by a notary public into English.*

Upon motion &c. that the plaintiff having exhibited his bill into this court against the defendant that lives at — in the kingdom of —, he hath appeared thereto and hath obtained an order for a commission for taking his answer at —, and such commission hath issued accordingly; That the defendant doth not understand the English language, and therefore it was prayed that the defendant may be at liberty to swear his answer in the — language, and that a notary public may be appointed to translate the same into the English language, and that he may be sworn to the true translation thereof, and that such translation may be filed with the defendant's other answer, which is ordered accordingly, but notice hereof is first to be given to the plaintiff's clerk in court.

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X. *Order directing that certain exhibits proved on a commission abroad be delivered to a notary public to be translated, and that his translation thereof may be read at the hearing of the cause.*

Upon motion &c. that the plaintiff having examined several witnesses in — in this cause, several of the plaintiff's exhibits and

proceedings are written in the — language, and therefore it was prayed that such of the said proceedings and exhibits as are written in the — language may be delivered to a notary public in order to translate the said several proceedings and exhibits into the English language, that the said — may be sworn to the true translation thereof, and that such translation may be read at the hearing of this cause, which is ordered accordingly, saving all just exceptions.

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*XI. Order appointing an interpreter upon the examination of a foreigner as a witness.*

Upon consideration this day had by the Right Honorable the Master of the Rolls of the humble petition of the plaintiff, stating (amongst other things) that this cause is at issue and that J. L. P. of &c. is a material witness for the plaintiff, and that the said J. L. P. speaks the French language but does not understand the English language so that the plaintiff cannot have the benefit of his testimony without the assistance of an interpreter; And therefore it was prayed and his Honor doth accordingly order that B. B. of &c. be appointed interpreter to the said J. L. P. on his being examined as a witness in this cause on behalf of the petitioner; And that the said B. B. be sworn truly to interpret the oath to be administered to the said J. L. P. and also the interrogatories on which he shall be examined and his depositions to such interrogatories, and likewise to keep such depositions secret until publication shall duly pass in this cause, of which notice is first to be given to the defendant's clerk in court.

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*XII. Order for an injunction enjoining the defendant to deliver possession to the plaintiff.*

Upon motion &c. it was alleged that by the order made on the hearing of this cause, it was ordered that the defendant should deliver possession of the estate in question and all deeds and writings in his custody or power relating thereto to the plaintiff; That the defendant who is in possession of the said estate was served with a writ of execution of the said order, and the plaintiff required him to deliver possession which he refused to do as by the affidavit appears; and an attachment having been made out against the said defendant, It was therefore prayed that an injunction may be awarded

against the said defendant to enjoin him to deliver possession of the said estate to the said plaintiff pursuant to the said decree, which upon reading the affidavit is ordered accordingly.

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XIII. *To dissolve an injunction nisi.*

Whereas the plaintiff obtained an injunction for stay of the defendant's proceedings at law until the defendant should answer the plaintiff's bill, and this court make other order to the contrary; Now upon motion this day made by Mr. — being of the defendant's counsel, it was alleged that the defendant hath since put in a full and perfect answer to the plaintiff's bill and thereby denied the whole equity thereof, And it was therefore prayed that the said injunction may be dissolved, which is ordered accordingly unless the plaintiff his clerk in court having notice hereof shall on — show unto this court good cause to the contrary.

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XIV. *Order made upon showing cause against dissolving an injunction, exceptions having been taken to the defendant's answer,—reference directed to the Master to certify whether the answer is sufficient or not, provided his report be obtained within a limited time.*

Whereas by an order of the — day of — for the reasons therein contained, it is ordered that the injunction granted in this cause for stay of the defendant's proceedings at law should be dissolved, unless the plaintiff his clerk in court having notice thereof should on this day show unto this court good cause to the contrary; Now upon motion &c. it was alleged that the defendant having put in an insufficient answer to the plaintiff's bill, the plaintiff hath taken exceptions thereto, since which the defendant hath not put in any further answer although the defendant's is very insufficient as the plaintiff is advised; And therefore it was prayed that the said injunction may be continued until the said defendant hath put in a perfect answer to the plaintiff's bill; Whereupon and upon hearing of what was alleged by the counsel on both sides, It is ORDERED that it be referred to Mr. — one &c. to look into the plaintiff's bill the defendant's said answer and the plaintiff's said exceptions, and certify whether the said answer be sufficient or not; But the plain-

tiff is to procure the Master's report in — days, or in default thereof the said injunction is to stand dissolved without further motion, which in the mean time is hereby continued.

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\* XV. *Order made on the petition of a purchaser directing a reference to the Master to inquire at what time the vendors (who were trustees for sale) had shown a good title, and when the incumbancers and all parties interested were ready to join; what expences had been incurred by the purchaser in getting in the incumbances, and in the execution of certain instruments, which ought not to have been borne by him, and also what dilapidations have taken place.*

Friday the 5th day of August, &c. 1825.  
 Between T. Tunstall esq. and M. I. his wife,  
 &c. - - - - - Plaintiffs,  
 and  
 F. M. Trappes and E. his wife &c. Defendants.  
 And between the said T. T. esq. and M. I.  
 his wife &c. - - - - - Plaintiffs,  
 and  
 M. A. Tasburgh &c. - - - - Defendants.  
 And between B. Rawson esq. - - Plaintiff,  
 and  
 The said M. A. Tasburgh &c. - Defendants.

Whereas the above named B. Rawson did on the 22d day of June last prefer his petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that on the — day of — 1821 the petitioner entered into a contract or agreement in writing with the above named defendants in the third mentioned cause whereby &c. [*This petition is inserted at length antea, vol. 1. p. 665; the recital of it in the order was precisely the same as there stated as far as the statement of the order of the 21st of August in p. 672, by which the time for completing the purchase was enlarged to the 15th day of November; the order proceeded thus:*]

That the said conveyances and assurances were not executed by all parties thereto by the said 15th day of November last, several of them having made various objections and others requiring certain conditions and compensations to be previously given or secured to

to them; And by another order of his Lordship made in the said cause, and also in the other two causes thereinbefore mentioned, upon the application of the defendants to the said thirdly mentioned suit, and bearing date the 13th day of November last, It was ordered by and with the consent and approbation of all parties beneficially interested in the said purchase (being the several parties to the first mentioned cause, or who had already executed the said conveyance) that the said time for completing the same should be further enlarged to the 10th day of January then next, and that upon the execution of the said conveyances releases mortgages and other assurances approved of by the Master by the parties thereto respectively except C. T. party thereto for whose signature within two years the petitioner thereby agreed to accept the undertaking of J. J. P. and G. P., and the fine levied by F. M. T. and E. his wife, and satisfaction of or a sufficient substantial indemnity against the judgments remaining unsatisfied on the rolls, and when the said conveyances releases mortgages and other assurances were so executed, the said fine levied, satisfaction so entered or indemnity given, and possession of the said estates delivered to the petitioner except the portion thereof in the possession of the defendant J. S., and the said conveyances and releases and the title-deeds evidences and writings deposited in the office of Mr. C. the Master to whom these causes stood referred ready for delivery thereof to the petitioner, after payment of the purchase-money, It was ordered that the full amount of the purchase-money, except £1030 and £3000, being the sum of £48,685, should be paid by the plaintiff into the bank, in the name and with the privity of the Accountant-General of this court to the credit of the three causes subject to the several charges liens and incumbrances affecting the said estates and to the further order of the court, but without prejudice to the claims of the plaintiff for costs and dilapidations; And it was ordered that £2520. 9s. 6d. part of the said £48,685 when paid in should be carried over to a separate account in these causes, to be entitled "The account of the S. estate," upon which W. R. the mortgagee of that estate was to have the first claim for principal interest and costs in respect of such mortgage money and costs; And it was ordered that the mortgage for £1030 should be paid off within one month after the execution thereof, and that upon the execution of proper and sufficient releases such sum of £1030 should be also paid by the petitioner into the bank to the credit of these causes; And it was ordered that the interest of the £3000 remaining on mortgage should be also from time to time during the life of the said F. M. T. paid into the bank to the credit of these causes, and upon

payment of the sum of £48,685 as aforesaid by the petitioner, It was ordered that the said title-deeds evidences and writings should be delivered up by the said Master to the plaintiff, and that the possession of the portion of the said estates in possession of the said J. S. should be then delivered by him to the petitioner, and that the purchase-money should not be paid out without notice to all parties in the said order named, and that the petitioner should be let into the receipt of the rents and profits as from the 11th day of October instant, paying interest from the 1st day of November then instant to the day of paying the money into court; That the said conveyances releases and other assurances were not completed and executed or the other matters and things in the said recited order mentioned done and performed by the said 10th day of January, and the time for doing or procuring the same was enlarged to the 10th day of February last, and from thence the same was further enlarged to the 15th day of March last, when another order was made in the said three causes, and bearing date the same 15th day of March last, whereby the said time was by and with the like consent as aforesaid still further enlarged to the 20th day of April last; And it was ordered that the provisions in the said order of the 13th day of November last, so far only as regards the payment by the petitioner into the bank in the name of the Accountant General of the full amount of the petitioner's purchase-money except the sum of £1030 and £3000, and his being let into the receipt of the rents and profits of the said estates from the 11th day of October last, paying interest from the 1st day of November to the day of paying the money into court, should be varied, and instead thereof, It was ordered that the petitioner should on or before the said 20th day of April then next, and when the said conveyances releases mortgages and other assurances were executed, such execution to be certified by the Master, and when the other matters and things directed in the said order to be done before the payment of the purchase-money into court, were done and performed as directed by the said order (the same to be verified by affidavit), pay into the bank with the privity of the said Accountant-General his said purchase-money with interest to be there placed to the credit of the said three causes as aforesaid, but subject and without prejudice as in the said order mentioned, and that the petitioner should be let into the receipt of the rents and profits of the said estate from the 5th day of April then next; That the said conveyances releases and assurances and other matters and things in the said order mentioned were not completed and done and performed by the said 20th day of April last, but by another order of this court bearing date the 2d day of May 1825,



the said time was finally enlarged to the 9th day of May last, and the said order of the 15th day of March 1825 was also thereby varied and directed to be as follows, viz. That the time for executing and settling all proper and necessary conveyances releases mortgages and assurances of the estate and premises to the petitioner the purchaser, which stood enlarged by the said order of the 13th day of November 1824 to the 10th day of January 1825, and which had been further enlarged to the said 15th day of March last, should be further enlarged to the 9th day of May then instant, and that the provisions of the order dated the 13th day of November 1824 so far only as regards the payment by the petitioner into the bank in the name of the Accountant-General of this court of the full amount of his purchase-money except the sums of £3000 and £1030 in the said order mentioned, and being let into the receipt of the rents and profits of the said estates from the 11th day of November then last, paying interest from the 1st day of November to the day of paying the money into court should be varied, and instead thereof that the petitioner should on or before the 9th day of May instant, and when the said conveyances releases and other assurances (the said mortgages excepted) were executed, and when the said matters and things directed by the said order dated the 13th day of November 1824 to be done before the payment of the purchase-money into court were done and performed as directed by the said order of the 13th day of November last, pay into the bank with the privity of the said Accountant-General to be there placed to the credit of these causes, his purchase-money, except the said sums of £3000 and £1030 as aforesaid, being the sum of £48,685 with interest, but subject and without prejudice as in the said order mentioned, he the petitioner as to his own execution and the defendants M. A. T., S. T. S., and C. V. the trustees as to the execution by themselves and all other parties (except the plaintiffs in the first and second causes, and except the defendants R. W., I. S., and R. O.) undertaking to procure the execution of the mortgages on or before the 26th day of May then next, and of the release of the mortgage for £1030 on or before the 26th day of June then next, the execution of such mortgages and releases as to the excepted parties being undertaken for by them respectively, the said mortgages and releases so far as the same had not already been approved of by or on behalf of the parties to be settled by the said Master in case the parties differ about the same, and that £2520. 9s. 6d. part of the £48,685 when so paid into the bank shall be carried over to a separate account in these causes, to be entitled "The account of the S.

estate;" upon which W. R. the mortgagee of that estate was to have the first claim for principal interest and costs in respect of such mortgage, and that upon the execution of a proper and sufficient release for the said mortgage of £1030, the petitioner should pay the said sum of £1030 and the interest thereon into the bank with the privity of the Accountant-General to be there placed to the credit of these causes subject to the further order of this court, and that the petitioner should also pay the interest of the £3000 remaining on mortgage from time to time during the life of the said F. M. T. into the bank with the privity of the said Accountant-General to be there placed to the credit of these causes, the amount to be verified by affidavit, subject to the further order of this court, and that the petitioner should be let into the receipt of the rents and profits of the said estates from the 5th day of April last; That the said defendants to the thirdly mentioned suit having at length completed the said conveyances and done and performed the matters and things in the said several orders required of them, the petitioner on the 7th day of May last paid his said purchase-money, except as aforesaid, into the bank, as by the same orders directed, part whereof has been carried over to the separate account of the said — estate, and the whole has since, pursuant to another order of this court, been laid out in the purchase of bank £3 per cent. annuities, in the name of the said Accountant-General In trust in these causes, subject to the further order of the court; That it was in and by the said purchase contract provided that inasmuch as the said manor land and hereditaments at N. aforesaid were subject to certain family portions not exceeding in the whole £7300 for persons some of whom from legal disabilities might for a time be incompetent to release the said estate, a full and sufficient sum of money for securing the payment of such portions should be set apart from the said purchase-money and be invested by the said defendants and petitioner their respective heirs executors administrators or assigns on government security in the joint names of trustees, two of whom to be named by the said defendants and two by the petitioner, until the payment and release of such portions, and a proper deed or instrument in writing should at the expense of the said defendants the vendors be prepared and executed by such trustees declaring the trusts thereof, which deed when so executed as aforesaid should be deposited with the petitioner his heirs appointees or assigns, but it was afterwards agreed by all parties and at the request of the defendants in the third mentioned cause, that to avoid setting aside so large a part of the said purchase-money as would be required to secure such portions

upon government security, the petitioner should retain the two sums of £1030 and £3000 being the only portions which were incapable of being released, and grant mortgages of competent parts of the said estates for securing the payment thereof when the parties entitled thereto should be enabled to release the same, and which mortgages were prepared and approved of by the said Master with the other deeds and instruments, and are the same as are mentioned and referred to in the said recited orders; That immediately after the payment by the plaintiff of his purchase-money and his obtaining his said conveyances, he did according to his undertaking in the last order execute and deliver over such two mortgages, and has also prepared and delivered for execution a release for the said sum of £1030, and is ready and desirous of paying off the same with the interest accrued thereon immediately the same is executed; That since the date of the said purchase agreement and during the period the title to the said estates and premises had been under investigation, and the subsequent length of time consumed in the settlement of the said conveyances and the said inquiry as to the necessary parties thereto and obtaining the concurrence and execution thereof by such parties, the said estates and premises and the buildings thereon have become greatly dilapidated, and the mortgagees and other incumbrancers in possession thereof have suffered the tenants thereof to carry off the produce thereof and otherwise cultivate the same in an unhusbandlike manner contrary to the custom of the country, whereby the land is greatly deteriorated, and the petitioner has lately caused the same to be surveyed and the damage estimated, and the same is found to amount to a very large sum of money, which the plaintiff is advised and submits he is entitled to have paid back to him out of the said purchase-money as an abatement, the same having been expressly paid under the several orders without prejudice to the said petitioner's said claim; That from the circumstances in the said Master's report of the number and amount of the incumbrances and of the various proceedings and negociations and other matters incident to the situation of the several parties, the conveyances and assurances to the petitioner have been greatly increased in number and length, and the expenses thereof and of the said purchase throughout have been also thereby greatly increased; and the plaintiff submits that he is entitled to be paid all such increase of expenses thereof out of the said purchase-money so paid by him into court as aforesaid, or that the said defendants in the third mentioned cause as vendors, are themselves bound to contribute thereto such portions of the said expenses as have been occasioned by

reason of such incumbrances proceedings and negociations or incident thereto, or as shall exceed the amount the petitioner would have had to bear had the said defendants the said vendors in the first instance procured conveyances of the several interests of such incumbrances to themselves, and then have conveyed to the petitioner by a common conveyance, and to be allowed the same as trustees in their accounts, and the petitioner has also at present been at the expense of the said two mortgages and the proceedings relative thereto for securing the parts of the said purchase-money for the said parties stated to be under legal disabilities and as provided by the said purchase agreement, but which it is thereby also provided should be paid by the said defendants in the third mentioned cause as hereinbefore stated; and the plaintiff has also entered into a certain deed of covenant for the production of the title-deeds of the said estates for the purposes of the inquiries in the first mentioned cause, the expenses whereof it has been agreed should be borne by the said defendants; And therefore Praying that it might be referred back to the said Master to tax the petitioner his costs of the said third mentioned suit, and also his costs of the second mentioned suit, and the costs of the said several orders and applications and other proceedings made and had in the said three suits jointly and in the said thirdly mentioned suit separately, Or if necessary, that it might also be referred to the said Master to inquire and certify to this court whether the said defendants had shown a good title to the said estates and premises, or whether they were able to execute or procure to be executed to the petitioner good and sufficient conveyances releases and assurances of the same free from all incumbrances save as appears by the said contract or agreement for sale previously to the filing of the petition in the said thirdly mentioned cause, or at what period they made out such good title or were able to execute or cause or procure to be executed such conveyances releases and other assurances as aforesaid; And that the said Master might also ascertain and allow to the petitioner the part or proportion of the costs charges and expenses of the said several conveyances releases and other assurances, and of the various proceedings negociations and other matters and things incurred and paid by him in consequence of or by reason or means of the number of incumbrances on the said estates and of the situation of the said several parties and incident thereto, together also with such costs charges and expenses as petitioner has incurred or may incur in or in relation to the said mortgages granted to secure the said portions as provided by the said purchase contract, and of the releases when paid off, and also of the said deed of covenant entered into by the

petitioner as aforesaid and of the production thereunder and incident thereto respectively; And that it might also be referred to the said Master to take an account and valuation of the dilapidations which have taken place on the said estates and premises since the date of the said agreement and of the deterioration and waste committed thereon since the same period and previously to the plaintiff taking possession thereof; And that what the said Master shall tax for the plaintiff's said costs of these suits respectively, and what he shall allow for the part or proportion of the said other costs charges and expenses hereinbefore mentioned, and also what he shall certify to be the amount or valuation of the said dilapidations deteriorations and waste might be paid back to the petitioner out of his said purchase-money so paid into the bank as aforesaid; and that for this purpose the Accountant-General might be directed to sell so much of the sum of £50,870, 3 per cent. consolidated annuities now standing in his name in the books of the bank of England In trust in these causes as will raise sufficient to pay the same; Whereupon all parties concerned were ordered to attend his Lordship on the matter of the said petition; And counsel for the petitioner and for the plaintiffs in the first and second causes, and for the defendants F. M. T. and E. his wife, F. T. &c. &c. &c. this day attending accordingly, no one attending for the other parties although they have been duly served with a copy of the said petition and order thereon as by affidavit now read appears, upon hearing the said petition, the agreement dated &c. &c. [*referring also to the several orders*] read, and what was alleged by the counsel for the petitioner and for the said parties, HIS LORDSHIP DOTH ORDER that it be referred back to the Master Mr. C. to inquire and state to the court at what time the defendants the vendors in the third mentioned cause had shown a good title to the estates and premises, and when the several incumbrancers and other parties joined, and when they were ready to join respectively in the conveyance thereof to the petitioner, the purchaser; And it is ordered that the said Master inquire whether any and what costs charges and expenses have been incurred and sustained by the said petitioner, the purchaser, in and about getting in the several incumbrances on the said estates and the mortgages to secure the portions and the deed of covenants mentioned in the petition and incident thereto which ought not to be borne by the petitioner, the purchaser; And it is ordered that the Master do also inquire and state to the court whether any and what dilapidations have taken place upon the said N. estate between the date of the contract for sale thereof and the petitioner taking possession, and to distinguish at what times such dilapidations have taken place,

and the parts of the said estate upon which the same have so taken place; and the said Master is to be at liberty to state special circumstances arising out of any of the said inquiries, and the same are to be without prejudice to the costs thereof respectively; and it is ordered that the rest of the petition do stand over.

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XVI. *Order for the appointment of a receiver with liberty to let the estate with the approbation of the Master. (See No. LXIII. and No. LXIV. of the New Orders in Chancery, postea.)*

Upon opening &c. IT IS ORDERED that it be referred to Mr. — &c. to appoint a proper person to be receiver of the rents and profits of the real estate of —, and to allow him a reasonable salary for his care and pains therein, such person so to be appointed receiver first giving security to be allowed of by the said Master and to be taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for and pay what he shall so receive as this court shall direct, and the tenants of the said estate are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estate from time to time with the approbation of the said Master as there shall be occasion.

N. B. If the estate be in Ireland say, “ and let the person who  
 “ shall be appointed receiver of the rents and profits of the said es-  
 “ tate in Ireland give security to be approved of by the said Master;  
 “ but the recognizance is to be acknowledged by the person so to  
 “ be appointed receiver before a Master of the court of Chancery  
 “ in Ireland, and to be duly entered and enrolled according to the  
 “ course of that court; and the taking and enrolling thereof is to  
 “ be duly certified to this court by one of the Masters of that  
 “ court.”

If there be copyhold estates and courts to be held, add at the end the following words: “ and let such courts as have been usually  
 “ held and are proper to be held for the copyhold estate, be from  
 “ time to time held by the receiver in the name or names of the  
 “ person or persons in whom the legal estate is, and let the receiver  
 “ bring into this court his account of all such fines and other  
 “ profits as shall be taken by him at such courts.”

If a manor, insert before the preceding clause “ and any other  
 “ person or persons in receipt of any part of the profits of the said  
 “ manor are also to pay the arrears and growing payments thereof

“ to such receiver,” and conclude thus, “ and let such receiver let  
 “ or set such part or parts of the land and premises and the quit  
 “ rents and other manorial rights and profits of the said manor  
 “ as have been usually let or set by copy of court-roll or otherwise  
 “ according to the custom of the said manor with the approbation  
 “ of the Master as there shall be occasion.”

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*XVII. Order made upon petition for sale of an estate; with liberty to the petitioners to proceed in a suit in the names of the plaintiffs upon indemnifying them against the costs.*

IT WAS ORDERED on the consent of the parties therein mentioned, that the said estate should be sold before the Master, together or in parts as the said Master should think fit, and all proper parties were to join as the said Master should direct; And in order to the said sale, all deeds and writings in the custody or power of any of the parties relating thereto were to be produced before the said Master upon oath; And it was ordered that the money arising by such sale should be paid by the purchaser or purchasers into the bank in the name and with the privity of the Accountant-General of this court, to be there placed to the credit of the said cause, subject to the further order of this court; And it was further ordered that S. T. &c. the petitioners should be at liberty to proceed in the said suit in the names of the plaintiffs A. S. &c., the petitioners indemnifying them against all costs which might be occasioned thereby.

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*XVIII. Order for a sequestration against a member of parliament.*

Upon motion &c. it was alleged that the defendant who is a member of parliament †, hath been served with a copy of the plaintiff's bill, and a subpœna to appear to and answer the same, to which he hath appeared accordingly, but hath not put in his answer thereto though his time for so doing is expired; IT IS THEREUPON ORDERED that a commission of sequestration do issue, directed to certain commissioners to be therein named, to sequester the defendant's personal estate, and the rents issues and profits

of his real estate, until the defendant shall fully answer the plaintiff's bill and this court make other order to the contrary, unless the defendant having personal notice hereof shall within eight days after such notice show unto this court good cause to the contrary.

† N.B. If the defendant be a peer, say:—"Who is a peer of this realm, hath been served with a copy of the plaintiff's bill, the letter of the Right Honorable the Lord High Chancellor of Great Britain, and a subpoena to appear," &c.

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XIX. *That service of a subpoena on the defendant's attorney be deemed good service on the defendant.*

Upon motion &c. it was alleged that the defendant prosecutes the plaintiff at law and cannot be found to be served with a subpoena, as by affidavit appears, and it was therefore prayed that service of a subpoena to appear to and answer the plaintiff's bill upon the defendant's attorney at law be deemed good service on the defendant to compel him to appear to and answer the plaintiff's bill, which upon hearing the said affidavit read is ordered accordingly.

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\*XX. Order made on an infant's having attained twenty-one, directing an immediate transfer to her of a sum of stock, and payment of the accruing dividends thereon, also payment of a sum of cash in the bank to her solicitor, and further directing upon the execution by her of the conveyances of certain estates to the purchasers thereof, under a decree for sale made during her minority (which decree is set forth in the recital of the petition), a transfer to be made to her of a sum of stock purchased with the monies produced by sale of the estates, and payment of the accruing dividends thereon. (The petitioner having married previously to the transfer of the latter sum, and covenanted that the same should be transferred to the trustees of the settlement executed previously to her marriage, it became necessary to obtain another order, which is inserted postea, p. 358.)

Vice Chancellor.

Wednesday the 8th day of August &c. 1827.  
 Between J. M. and I. his wife, E. L. and M.  
 his wife, - - - - Plaintiffs,  
 and  
 J. S., J. W. and L. his wife &c. Defendants.

Whereas the above-named defendant L. L. S. did on the 1st day of August instant prefer her petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that W. S. late of &c. deceased, by his last will and testament bearing date the 8th day of June 1809 duly executed and attested for the validity of devises of real estates, gave and devised unto his mother C. S. the messuage &c. for and during the term of her natural life, and from and immediately after her decease in case she survived the said testator, which event happened, he gave and devised the same premises unto his son J. S. his heirs and assigns for ever, subject nevertheless to and charged with the payment of the sum of £500 which he directed should be considered as part of his personal estate; And the said testator also gave and devised unto his wife M. S. the messuage &c. for and during the term of her natural life, and from and after the decease of his said wife, in case she survived the said testator (which she did) he gave and devised the said last-mentioned premises unto his said son J. S. his

Recital of petition;

Stating a will, whereby the testator devised a messuage to his mother for life, remainder to his son in fee, charged with the payment of £500;

Devise of another messuage to his wife for life, remainder to his son in fee charged with the payment of £1000;

Bequest of the residuary personal estate and of the two sums of £500 and £1000 to his five daughters equally;

Death of the testator leaving his mother and wife surviving, who have since died;

Death of the devisee in fee intestate leaving a widow, and the petitioner his only daughter his heiress at law an infant;

Marriage of the devisee's widow with the defendant J.W., who as guardian of the petitioner entered into possession of the devised estates.

Order made directing a reference to the Master to take an account of what was due for interest on the sums of £500 and £1000, an account of the rents of the estates charged therewith received by the defendants J.W. and his wife;

Also directing a sale of the estates charged with the above sums,

the petitioner to join therein on attaining 21, unless cause shown to the contrary within six months after attaining 21,

and the purchase-moneys to be paid into the bank;

heirs and assigns for ever, subject nevertheless to and charged and chargeable with the payment of the sum of £1000 which he directed should be also considered as part of his personal estate, and all the residue of the said testator's personal estate as well as the said several sums before-mentioned to be considered as his personal estate, he gave and bequeathed unto his five daughters equally to be divided between them as particularly mentioned in the said will; That the said testator departed this life on or about the — day of —, leaving his said mother C. S. who departed this life on or about the — day of December —, and the said M. S. who died on or about the — day of January —; That the said I. S. the son of the said testator and to whom he gave and devised the said estates charged as aforesaid after the death of the said C. S. and M. S., also departed this life on the — day of — intestate, leaving the defendant L.W. then L. S. his widow and the petitioner his only daughter and heiress at law him surviving; That the said L. S. afterwards intermarried with the defendant J.W., and they as the bailiffs or guardians of the petitioner entered into the possession of the said estates so devised and charged as aforesaid and into the receipt of the rents and profits thereof; That by an order made in this cause bearing date the 23d day of December 1817, it was referred to Mr. C. then one of the Masters of this court, to take an account of what was due for interest on the said sums of £1000 and £500 so charged on the said estates as aforesaid, and also to take an account of the rents and profits of the several premises so charged with the payment thereof, which had come to the hands of or been received by the said defendants J.W. and L. his wife or by any person or persons by their or either of their order or for their or either of their use; And it was further ordered that the said several premises so respectively charged with the payment of the said sums of £1000 and £500 or so much or such part thereof respectively as the said Master should deem necessary, should be sold with his approbation to the best purchaser or purchasers that could be got for the same to be allowed of by the said Master, wherein all proper parties were to join and concur as the said Master should direct, and in order thereto, All deeds and writings were to be produced, and the petitioner was also to join in such sale when she should attain the age of twenty-one years, unless on being served with a subpoena to show cause against the said order, the petitioner should within six months after attaining that age show good cause to the contrary; And in the mean time it was ordered that the purchaser should hold and enjoy the same against the said defendant the petitioner and her heirs; And it was ordered that the moneys to arise by such sale

should be paid into the bank with the privity of the Accountant-General of this court to be there placed to the credit of this cause, "The amount of monies produced by sale of real estates," subject to the further order of the court; That the said Master by three several reports of sale bearing date respectively the 13th day of October 1818 which were all duly confirmed, certified that he had been attended by the solicitors for all parties, and that it appearing to him to be necessary that the whole of the premises so charged as aforesaid should be sold, he had therefore provided to sell the same in three lots in manner therein mentioned, and by one of such reports he certified that W. F. of &c. (one of the defendants) was the best bidder for and the purchaser of the premises comprised in lot 1 at the price or sum of £1000, and that in the conditions it was stipulated that the purchaser should pay for the fixtures in and about the same according to the valuation therein mentioned, which in the particular of sale was stated to have been made at the sum of £15, which said sum of £15 being added to the sum of £1000 they made together the sum of £1015 being the whole purchase-money for lot 1; And by another of such reports he certified that J. G. and J. S. of &c. were the best bidders for and the purchasers of the premises comprised in lot 2 at the price or sum of £1320; And by the other of such reports he certified that J. M. of &c. (one of the plaintiffs) was the best bidder for and the purchaser of the premises comprised in lot 3 at or for the price or sum of £1000, and that in the said conditions it was stipulated that the purchaser of the said lot 3 should pay for all fixtures belonging to the vendors according to the valuation therein also mentioned, which in the particular of sale was stated to have been made at the sum of £5, which being added to the sum of £1000 made £1005 the whole amount of the purchase-money for the said lot 3; That the said Master by his general report under the said order also certified that he had computed interest at £4 per cent. per annum on the said two several sums of £1000 and £500 from the times of the respective deaths of the said C. S. and M. S. to the 27th day of January 1821 the date of that his report; and he found that there was due for interest on the said sum of £1000 the sum of £237, and on the said sum of £500 the sum of £32, making in all the sum of £319; and he found that there had been received by the said defendants J. W. and L. his wife on account of the rents and profits of the said several premises the several sums set forth in the schedule to his report amounting to £535, but that they had paid expended or disbursed thereout on account of the same premises the several sums also set forth in the schedule to his report amounting

By three reports of sale the Master certified that the whole of the premises charged had been sold in three lots,

that the defendant W. F. was the purchaser of lot 1 at £1000 including the value of the fixtures;

that J. G. and J. S. were the purchasers of lot 2 at £1320;

and that the plaintiff J. M. was the purchaser of lot 3 at £1000 including the value of fixtures;

Statement of the Master's general report ascertaining the amount due for interest on the two sums of £1000 and £500,

also the amount of rents received by and due from the defendants J. W. and wife,

that the amount of purchase-monies had been paid into the bank and invested in £3 per cent. annuities;

statement of a subsequent order confirming the Master's report and directing the defendants J. W. and wife out of the sum of £438 due from them on account of the rents of the premises, to pay five sums of £63, and the residue to be paid into the bank to the petitioner's account;

Reference directed to the Master to tax all parties their costs, and directing a sale of so much of the amount of stock produced by sale

to £97 which being deducted from the said £535 there remained a balance of £438 which he found due from the said defendants J. W. and L. his wife on account of such rents and profits; and he further found that the purchase-monies for all the said lots and amounting altogether to £3391 had been paid into the bank with the privity of the Accountant-General to the credit of this cause, "The amount of monies produced by sale of real estates," pursuant to the directions of the said order, and that the same had been laid out in the purchase of £4871 bank 3 per cent. annuities in the name of the said Accountant-General in trust in this cause as aforesaid, which together with the sum of £73 cash account due for half a-year's dividend thereon then stood in trust to the credit of the said cause as aforesaid; That by another order made in this cause bearing date the 13th day of February 1821, It was ordered that the said Master's report dated the said 27th day of January 1821 should be confirmed, and that the said defendants J. W. and L. his wife should out of the said sum of £438 certified to be due from them and remaining in their hands on account of the rents and profits of the said estates and premises charged with the said sums of £1000 and £500 in the said report mentioned, pay to the plaintiff J. M. in right of I. his wife the sum of £63, being one-fifth part of the sum of £319 certified to be the interest which had accrued on the said sums of £1000 and £500 from the time of the respective deaths of the said M. S. and C. S., and the like sum of £63, being one other fifth part thereof to the plaintiff E. L. in right of the plaintiff M. his wife, the like sum of £63, being one other fifth part thereof to the defendant C. S. the younger, the like sum of £63, being one other fifth part thereof to the defendant W. F. in right of the defendant M. his wife, and the like sum of £63, being the remaining one-fifth part thereof to the defendant T. G. in right of the defendant M. his wife; And it was ordered that the said defendants J. W. and L. his wife should pay the sum of £118 the residue of the said sum of £438 after making such several payments thereout as aforesaid into the bank with the privity of the Accountant-General to be there placed to the credit of this cause to an account to be entitled "The defendant L. L. S. her account of dividends and interest;" And it was ordered that it should be referred back to the Master to tax all parties their costs of obtaining the said order of the 28th day of December 1817, and of the said Master's report and of the application for the now stating order, and that so much of the £4876 bank 3 per cent. annuities then standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by sale of real

estates," as would be sufficient to raise such costs when taxed, and also the several sums of £1000 and £500 should be sold in the usual manner, and out of the monies to arise by such sale, It was further ordered that such costs should be paid in manner therein mentioned, and that the sum of £300 should be paid to the plaintiff J. M. in right of the plaintiff I. his wife, being one-fifth part of the said sums of £1000 and £500, and that the further sum of £300, being one other fifth part thereof, should be paid to the plaintiff E. L. in right of the plaintiff M. his wife, and that the further sum of £300, being one other fifth part thereof should be paid to the defendant W. F. in right of the defendant M. his wife, and that the further sum of £300, being one other fifth part thereof should be paid to the defendant C. S. the younger, and that the further sum of £300 being the residue of the said two sums of £1000 and £500 should be carried over to "The account of the defendant M. G. and her children," to be laid out in manner thereby directed; And it was ordered that the sum of £73 cash in the bank remaining to the credit of this cause "The amount of monies produced by sale of real estates" should be carried over to the said account of the defendant L. L. S. her account of dividends and interest; And it was ordered that the same when so carried over and also the sum of £118 when so paid into the bank by the said defendants J. W. and L. his wife as aforesaid should be also laid out in the purchase of bank 3 per cent. annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the court; And it was ordered that the dividends from time to time to accrue due on the said bank annuities when purchased, and also the dividends to accrue due on the residue of the said £4871 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by sale of real estates," after such sale as aforesaid and on the accumulations thereof respectively should be from time to time laid out in the purchase of like bank annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the court; That the said defendants J. W. and L. his wife duly paid the said five sums of £63 to the several parties in the said order named, and the residue of the said sum of £438 so reported due from them as aforesaid and being the sum of £118 the said defendants paid into the bank to the credit of the said cause, "The defendant L. L. S. her account of dividends and interest," as also

of the estates as would be sufficient to raise the amount thereof, and also the said two sums of £1000 and £500, and directing the payment of those two sums in five shares,

also directing certain sums to be carried over to the petitioner's account, and to be invested in 3 per cent. annuities,

and the dividends from time to time accruing due to be invested in like bank annuities to the petitioner's account;

also stating that the defendants J. W. and wife paid the five sums of £63 to the parties named in the order, and paid the balance, £118, into the

bank, which with £73 were laid out in bank annuities.

Statement of the amount of costs taxed,

and of the amount of stock purchased with the monies produced by sale of the estates remaining after making the sales directed;

Statement of the amount of the accumulations in respect of dividends;

that the petitioner has attained 21, and is willing to execute all necessary conveyances to the purchasers,

directed by the said order, and the same when so paid in together with the said sum of £73 cash in the bank to the credit of the said cause, "The amount of monies produced by sale of real estates," was pursuant to the said order laid out in the purchase of the sum of £251 bank 3 per cent. annuities in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and the costs of all parties were taxed by the Master under the said order and amounted altogether to the sum of £270 as appeared by his certificate thereof, which together with the said two sums of £1000 and £500 making in all £1770 were raised by sale of £2325 bank 3 per cent. annuities, part of the sum of £4871 bank 3 per cent. annuities mentioned in the said order, and such costs together with such two sums of £1000 and £500 were paid and divided in manner and according to the directions of the said order as appears by the said Accountant-General's certificates thereof, whereby there was left standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by sale of real estates" the sum of £2545 bank 3 per cent. annuities, and on the defendant L. L. S. her account of dividends and interest the said sum of £251 bank 3 per cent. annuities; That the dividends which have accrued due on the said sum of £2545 bank 3 per cent. annuities the amount of monies produced by sale of real estates have been from time to time as the same have accrued due carried over to the said account entitled "The defendant L. L. S. her account of dividends and interest," and have been together also with the dividends on the said sum of £251 bank 3 per cent. annuities standing in the said last-mentioned account and the accumulations thereon respectively laid out in the purchase of other like annuities whereby there is now standing in the name of the said Accountant-General in trust in this cause, the said account entitled "The defendant L. L. S. her account of dividends and interest," the sum of £956 bank 3 per cent. annuities and the sum of £13 cash as appears by the said Accountant-General's certificate thereof; That the petitioner attained her age of twenty-one years on the 3d day of May last, and is ready and willing and hereby offers to execute all proper and necessary conveyances and assignments of the said several estates and premises so sold as aforesaid unto the respective purchasers thereof, and the petitioner has already become absolutely entitled to have transferred to her the said sum of £956 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to have paid to her the said sum of £13 cash to the credit of the said last-mentioned account as aforesaid, and upon the execution of such several conveyances will be entitled

to have transferred to her the said other sum of £2545 bank 3 per cent. annuities, also standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by sale of real estates," and to be paid any cash which might accrue thereon previously to such transfer; And Praying that the said Accountant-General might be forthwith ordered to transfer into the name of the petitioner the said sum of £956 bank 3 per cent. annuities so standing in his name in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to pay unto the petitioner's solicitor on account of his costs the said sum of £13 cash in the bank to the credit of this cause the like account, and that upon the due execution by the petitioner of the several conveyances and assurances of the said estates so sold as aforesaid, to the said purchasers thereof, the same to be verified by affidavit, the petitioner might have also transferred into her name the said sum of £2545 bank 3 per cent. annuities so standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by sale of real estates" as aforesaid, and might also have paid to her any future dividends which may accrue due thereon previous to such transfer thereof; Whereupon &c. upon hearing the said petition, the said will, the said order dated the 23d day of December 1817, the said order dated the 13th day of February 1821, the said report dated the 27th day of January 1821, an affidavit of L. W. the wife of the defendant J. W. whereby it appears that she is the mother of the defendant L. L. S. and that the said L. L. S. has attained her age of twenty-one years, and that she is sole and unmarried, and the Accountant-General's certificate read, and what was alleged by the counsel for the petitioner and for the said parties and purchasers, **THIS COURT DOETH ORDER** that the £956 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The defendant L. L. S. her account of dividends and interest," together with any interest which shall accrue on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the defendant L. L. S. spinster; And it is ordered that the sum of £13 cash in the bank to the credit of this cause the like account be paid to Mr. C. S. the petitioner's solicitor on account of his costs; And upon the due execution by the petitioner of the several conveyances and assurances of the said estates sold as in the petition mentioned to the several purchasers thereof, such execution to be verified by affidavit, **IT IS ORDERED** that the £2545 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The amount of monies produced by

and praying an immediate transfer of the sum of stock standing in the Accountant-General's name, arisen from accumulation of dividends, and payment to her solicitor of the cash in the bank, and upon the execution by petitioner of the conveyances to the purchasers a transfer of the remaining sum of stock purchased with the monies produced by sale of the estates.

sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the said defendant L. L. S. spinster; and for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this court in that case made and provided.

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\* XXI. *Order directing the transfer of a sum of stock to the trustees of a settlement, which stock by a former order made before the marriage had been directed to be transferred to the wife upon the execution by her of certain conveyances; vide antea, p. 351.*

At the Rolls.  
Master of the Rolls.

Monday the 25th day of February &c. 1828.  
Between J. M. and J. his wife, E. L. and  
M. his wife - - - - Plaintiffs,  
and  
J. S., J. W. and L. his wife &c. &c.  
Defendants.

Recital of petition of the husband and wife and the trustees of their marriage settlement, stating an order directing a transfer to be made to the petitioner L. L. O. then L. L. S. spinster, of a sum of stock standing in the Accountant-General's name upon the execution by her of certain conveyances;

Whereas the Rev. H. O. clerk and L. L. O. his wife (late L. L. S. one of the defendants above named) and the Rev. J. W. (one other of the above named defendants) and the Rev. J. L. W. clerk did on the 12th day of February 1828 prefer their petition unto the Right Honorable the Master of the Rolls, setting forth that by an order made in this cause bearing date the 8th day of August 1827 It was (among other things) ordered that upon the due execution by the said petitioner of the several conveyances and assurances of the estates sold as in the said petition mentioned to the several purchasers thereof (such execution to be verified by affidavit) the sum of £2545 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The account of monies produced by sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof thereby directed should be transferred and paid to the said defendant the said petitioner (and by her then name and addition of) L. L. S. spinster; That before the complete execution of the said several conveyances and assurances of the said

that before the final completion thereof and trans.



estates sold as in the said petition and order mentioned by the said petitioner L. L. O., and before any transfer of the said sum of £2545 bank annuities unto her, she the said petitioner intermarried with and is now the wife of the petitioner H. O., but before the solemnization of such marriage certain indentures of settlement were made and executed bearing date respectively the 3d and 4th days of February now instant, the latter made between the said petitioner L. L. S. of &c. spinster of the first part, the petitioner H. O. of the second part, the petitioners J. W. and J. L. W. of the third part, and P. P. and P. B. L. therein described, of the fourth part, whereby after reciting (amongst other things) that the said petitioner L. L. O. (then L. L. S.) was possessed of or entitled (*inter alia*) to the said sum of £2552 bank 3 per cent. annuities standing in the name of the said Accountant-General, and which would be transferred unto her immediately upon the execution of certain conveyances to be certified by affidavit, and that a marriage had been agreed upon and was shortly intended to be had and solemnized between the said H. O. and L. L. S., and that upon the treaty for the said marriage it was stipulated and agreed (amongst other things) that the said sum of £2545 bank 3 per cent. annuities should be settled and assured upon and for the trusts intents and purposes and with under and subject to the powers provisoes declarations and agreements thereafter expressed and declared of and concerning the same; It was (amongst other things) witnessed that in pursuance of the said stipulation and agreement and for effectuating the same, and for and in consideration of the said marriage, he the said H. O. for himself his heirs executors and administrators and also for the said L. L. S. his said intended wife did covenant promise engage and agree, and the said L. L. S. did with the privity consent and approbation of the said H. O. (testified as therein mentioned) for herself her heirs executors and administrators further consent covenant declare and agree to and with the said J. W. and J. L. W. their executors administrators and assigns, that in case the said intended marriage should take effect they the said H. O. and L. L. S. should and would with all convenient speed after the solemnization thereof make do and execute or cause and procure to be made done and executed or join and concur in and procure all proper and necessary parties to join and concur in all such acts deeds matters things transfers and assurances as by the said J. W. and J. L. W. or the survivor of them or by their or his counsel should be required for effectually transferring and making over the said sum of £2545 bank 3 per cent. annuities which were so standing in the name of the said Account-

fer of the fund she intermarried with the petitioner H. O.;

that previously thereto a settlement was executed whereby L. L. S. covenanted to transfer the stock to trustees upon the trusts therein mentioned;

ant-General and to which the said L. L. S. was so entitled as aforesaid so and in such way and manner as that the same bank annuities might be vested in or in the joint names of the said J. W. and J. L. W. their executors administrators and assigns upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements therein after particularly declared of and concerning the same; That the petitioner the said L. L. O. has now fully completed the execution of the said several conveyances and assurances of the said estates sold as in the said order mentioned, and is thereby become entitled to have the said sum of £2545 bank 3 per cent. annuities transferred, and the petitioners are desirous that the same should be transferred into the names of the said J. W. and J. L. W. pursuant to their said covenant in that behalf; That since the date of the said order the sum of £38 cash has arisen and now stands to the credit of the said cause the before mentioned account for half a year's dividend upon the said sum of £2545 bank annuities, which sum the petitioners H. O. and L. L. O. his wife are desirous should be paid unto their solicitor on account of his costs of obtaining the said order and of this application; And therefore praying that the sum of £2545 bank 3 per cent. annuities standing in the name of the Accountant-General in trust in this cause, "The account of monies produced by sale of real estates," and mentioned in and directed by the said order of the 8th day of August last to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster might be transferred unto the petitioners J. W. and J. L. W. upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements mentioned and declared in and by the said indenture of settlement of the 2d day of February now instant of and concerning the same; and that the sum of £38 cash in the bank to the credit of this cause the like account might be paid to the petitioner's solicitor on account of his costs of obtaining the said order and of this application; Whereupon &c. upon hearing the said petition, the said order dated &c., the said indenture of settlement dated &c. and the affidavit of P. B. L. whereby it appears that the said conveyances and assurances have been duly executed, and an affidavit of the said P. B. L. identifying the said indenture of settlement, and that there is not any other settlement of the fund in question, and the Accountant-General's certificate read, and what was alleged by the counsel for the petitioners, **HIS HONOR DOETH ORDER** that the £2545 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause,

that the petitioner L. L. O. has fully completed the execution of the conveyances, and is desirous to have the fund transferred to the trustees of the settlement;

that a half-year's dividend is due, which the petitioners are desirous should be paid to their solicitor,

and praying that the fund may be transferred to the petitioners the trustees of the marriage settlement,

and the amount of the dividends due thereon be paid to the petitioner's solicitor.

"The account of monies produced by sale of real estates," directed by the order of the 8th day of August last to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster, be instead thereof transferred to the petitioners the defendants J. W. and J. L. W. upon the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements mentioned and declared in and by the indenture of settlement of the 4th day of February instant in the petition mentioned of and concerning the same, it appearing by the affidavit of P. B. L. that the several conveyances and assurances mentioned in the former order have been duly executed by the petitioner L. L. O.; And it is ordered that the sum of £38 cash in the bank remaining on the credit of this cause the like account be paid to Mr. C. S. the petitioners' solicitor on account of his costs of obtaining the said order and of this application; And for that purpose the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this court in that case made and provided.

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*XXII. Order for a will to be delivered out of the Prerogative Court in order to be proved on a commission, security being first given for the return of the same.*

Upon opening &c. by Mr. M. of counsel for the defendant T. A. it was alleged that this cause came on to be heard &c., and it was ordered that the same should stand over with liberty for the defendant T. A. to prove the will of W. A. dated &c. made and executed by him at B. in France, whereof defendant T. A. is the only devisee and executor; That the said defendant on the death of the said testator proved the will in common form, and thereupon the said testator's original will was deposited in the Prerogative Court of C.; That — W. one of the witnesses to said will is master of a packet-boat which goes from D. to C. and B. in F., and — H. one of the other witnesses to the said will now resides at B. aforesaid, and — B. the other witness lives in L.; That as said defendant T. A. cannot get the said — W. up to L. or the said — H. to come over from B., it is necessary that he should have a commission to be executed at D. and B. in order to examine the said witnesses to prove the said will, at which commission it will be necessary that the said will be produced; and it being customary in such cases

for the Prerogative Office to deliver out original wills to be proved at places distant, on taking bond from one or more sufficient persons in a reasonable penalty to return the same, the said defendant T. A. hath applied to the register and record-keeper of said Prerogative Court to have said will delivered out accordingly, but they refuse to deliver out the same upon any security, but insist upon sending a messenger of their own with it, which will put the said defendant to a considerable expense; It was therefore prayed that &c.; Whereupon and upon hearing &c. HIS LORDSHIP DOTH ORDER that the said defendant T. A. be at liberty to take out a commission for the examination of his witnesses at B. and D. aforesaid to prove the said will, and that the plaintiff and the other defendants in this cause do join in commission and strike commissioners' names within six days after notice hereof, and in default thereof, that the said defendant T. A. be at liberty to sue out such commission directed to his own commissioners; and it appearing that the defendant T. A. is the only devisee who can claim any real estate under the said will, It is ordered that the original will be delivered out by the proper officer of the Prerogative Court to a proper person to be named by the said defendant in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in — from the delivery thereof to him.

XXIII. *Order for the like purpose as the preceding order.*

Upon opening &c. by Mr. Attorney-General of counsel for the plaintiffs and defendants in this cause, it was alleged that W. R. having in his life-time contracted several debts, on the — day of — made his will, and thereby devised to the defendants L. H. and W. R. his son all his real estate in trust to be sold for payment of his debts, and appointed them executors, and died in —, soon after which the defendants his executors proved the same in common form, and thereupon the said testator's original will was deposited in the Prerogative Office, and that the plaintiffs in — Term exhibited their bill in this court against the defendants for an account of the said testator's personal estate, and to have the said will proved and the testator's real estate sold for payment of his debts, to which the said defendants have appeared and put in their answers and plaintiffs have replied, and the cause being at issue, a commission issued for the examination of witnesses in the county of —, at which commission it will be necessary to have

the said testator's will proved in regard the defendant W. R. who is heir at law to said testator is an infant, and it being customary in such cases for the Prerogative Office to deliver out original wills to be proved in the country, on taking bond from one or more sufficient persons in a reasonable penalty, the parties in this cause have applied to the registers of the Prerogative Court to have the same delivered out accordingly, but they refuse to deliver out same on any security, but insist to send a messenger of their own with it, which will put the parties to a considerable expense; and in regard the testator's estate is not sufficient for payment, it was therefore prayed that the registers of the Prerogative Court or their deputy may forthwith deliver out the said original will in order that the same may be proved at the said commission, upon giving sufficient security to bring back and re-deliver same unto the said office in six weeks; Whereupon and upon hearing Mr. Solicitor-General of counsel for the register of the Prerogative Court, an order in a cause of L. against D. dated —, an order in a cause B. against B. dated —, and an order in a cause S. against B. dated — read, and what was alleged by the counsel for said parties, HIS LORDSHIP DOTH ORDER that the said original will be delivered out by the proper officer of the Prerogative Court to a proper person to be named by the plaintiffs and defendants the said executors and devisees under the said will, in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in six weeks from the delivery thereof to him.

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XXIV. *Order to compel a witness to attend to be examined, or stand committed.*

Upon motion &c. that — is a material witness for the plaintiff in this cause, and hath been served with a subpoena returnable immediately to attend and be examined as a witness for the plaintiff in this cause, as by affidavit now produced and read appears, notwithstanding which the said — hath not attended to be sworn and examined, as by the examiner's certificate now also produced and read appears; IT IS THEREUPON ORDERED that the said — do in four days after personal notice hereof attend and be sworn and examined as a witness for the plaintiff in this cause, or in default thereof that the said — do stand committed to the prison of the Fleet.

*XXV. Order for liberty to exhibit interrogatories as to the credit of a witness.*

Upon motion &c. it was alleged that the plaintiffs have examined A. B. as a witness for them in this cause who is a person of ill fame, and the defendant hath exhibited articles in the examiner's office touching the credit of the said A. B. as by certificate appears; It was therefore prayed that the defendant may be at liberty to exhibit interrogatories for the examination of witnesses to the credit of the said A. B., which is ordered accordingly.

## CHAPTER XVII.

## DECREES AND DECRETAL ORDERS.

- I. *Decree opening stated accounts, and directing a general account to be taken of all dealings and transactions between the plaintiffs and defendants; costs given as to so much as relates to setting aside the stated accounts.*

His Lordship doth declare that the three stated accounts dated &c. ought to be opened and set aside and doth order and decree the same accordingly; And it is hereby referred to Mr. — one &c. to take a general account of all dealings and transactions between the plaintiffs or either of them and the defendants, and also of the value of any timber felled and taken by the defendants from off the plaintiffs' estate, in the taking of which account the Master is to make unto all parties all just allowances; And for the better taking the said account all parties are to be examined upon interrogatories, and produce all books and papers in their custody or power relating thereto upon oath before the said Master as the said Master shall direct; And it is ordered and decreed that defendants do pay to the plaintiffs their costs for as much of the cause as relates to the setting aside the said stated accounts to be taxed by the said Master, and his Lordship doth reserve the consideration of the rest of the costs of this suit until after the said Master shall have made his report, and the said parties are to be at liberty to apply to the court as occasion shall require.

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\*II. Decree for payment of the arrears of an annuity secured by bond given for maintenance with interest upon each half-yearly payment, against the devisee of the real and personal estate of the obligor. (See *Newman v. Auling*, 3 *Atk.* 579.)

An account to be taken of the arrears due and interest at £4 per cent. on each half-yearly payment from the end of six months after same became due; the defendant admitting assets directed to pay the amount to be found due as Master should direct; and in default of payment plaintiff to be at liberty to apply for sale of the deceased's real estate; direction to the Master to set apart sufficient real estate to secure the annuity, and the defendant to execute a proper conveyance or grant; defendant to pay costs up to the hearing; subsequent costs reserved.

This cause came on to be heard 9th November 1747, before the Lord Chancellor, when his Lordship was pleased to order and decree that it should be referred to Master Allen one of the Masters of this Court, to take an account of what was due to the complainant for the arrears of an annuity of £30 a-year secured by bond, and to compute interest on each respective half-yearly payment from the end of six months after the same respectively became due after the rate of 4 per cent. per annum; And the defendant having by her answer admitted that the personal and real estate of her said father were together more than sufficient to answer the said annuity, It was further ordered that the plaintiff should pay to the said defendant what should be found due for the arrears of the said annuity and interest at such time and place as the said Master should appoint, and continue to pay to plaintiff the growing payments of the said annuity as they should become due half-yearly; And in case the defendant should not pay what should be found due for the arrears of the said annuity and interest as aforesaid, then the plaintiff was to be at liberty to apply to the court for a sale of a sufficient part of the real estate in question; And it was further ordered that the said Master should see a sufficient part of the said real estate set apart for securing to the plaintiff the growing payments of the said annuity during her mother's life; And it was further ordered that the defendant should execute to the plaintiff a proper conveyance of the said estate or grant thereout for securing the growing payments of the said annuity accordingly with the approbation of the said Master; And that the defendant should pay to plaintiff her costs of this suit up to this time to be taxed by the said Master; the consideration of subsequent costs reserved till the Master should make his report; liberty to parties to apply &c.



III. Decree by consent directing a reference to arbitration.

His Lordship doth by consent order that all matters in difference between the plaintiffs and defendants in this cause be referred to the award and determination of I. H. of &c. esq., so that he shall make and publish his award in writing of and concerning the premises in question on or before — now next ensuing, or on or before such further time as hereinafter mentioned, and that the said parties do stand to abide by perform and fulfil the award which the said arbitrator shall so make of and concerning the premises; And by the like consent it is ordered that the said arbitrator is to be at liberty to examine upon oath or upon interrogatories or otherwise at his discretion the said plaintiffs and defendants or any of them, or any other person or persons who shall be produced as a witness or witnesses before him by either party, such plaintiffs and defendants or other person or persons being sworn before one of the Masters of this court or before a Master Extraordinary in the country if there shall be occasion; And the said parties are to produce before the said arbitrator upon oath if required all deeds instruments books papers writings and accounts in their or any or either of their custody or power touching the matters in question or any of them as the said arbitrator shall direct; And by the like consent it is ordered that the costs of this suit and also of the said reference and award and all other costs charges and expenses attending or relating to the matters in difference between the said parties or either of them shall be in the discretion of the said arbitrator, and shall be paid in such manner and by whom and to whom and at such time or times as shall be directed by his award; And by the like consent it is ordered that the said arbitrator shall be at liberty by writing under his hand to enlarge the time for making his award from time to time as he shall see occasion; and that the said arbitrator may if he thinks fit proceed *ex parte* in the said reference in case of the refusal or neglect of any of the said parties to attend him thereon after reasonable notice in that behalf; And by the like consent it is ordered that no bills or bill are or is to be filed in any court of equity by any or either of the said parties against the said arbitrator for any matter or thing he shall do in about or touching the matters to him hereby referred; And any or either of the said parties are or is to be at liberty to apply to this court to have the said award made an order of this court.

Award to be made by a fixed time;

Arbitrator to be at liberty to examine upon oath the parties and witnesses,

before whom to be sworn;

all parties to produce deeds, &c.

the costs of the suit and of the reference to be in the discretion of the arbitrator, who is to be at liberty to enlarge the time for making his award, and to proceed *ex parte* in default of any party attending;

No bill to be filed against him;

Liberty reserved to the parties to have the award made a rule of court.

IV. *Minutes of a decree directing a reference to arbitration, with a direction for appointing an umpire in case the arbitrators disagree.*

Let all matters in difference between the parties be referred to the arbitration and determination of T. T. and S. S. and they to make their award on or before —, and in case they shall not agree they are to name an umpire, and he is to make his umpirage on or before —, and both parties are to produce all books and papers relating to the matters in question in their custody or power before the arbitrators and umpire respectively, or such of them as the arbitrators and umpire shall respectively direct, to be ascertained by the oath of the respective parties producing the same, and the award or umpirage is to be made an order of this court, and no bill in equity is to be brought against the arbitrators or umpire.

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V. *Decree for establishing a charity.*

Decree the charitable bequest to be established,

the information to stand dismissed against one defendant with costs ;  
an account to be taken of the rents of the charity estate,

the balance of the account to be divided into moieties and paid as directed by the will,

His Lordship doth declare that the charitable bequest and uses made and created by the will of W. B. ought to be established and the trusts thereof performed and carried into execution, and doth order and decree the same accordingly ; And his Lordship doth order that the information as against the defendant T. S. do stand dismissed out of this court with costs &c. ; And as between the relators and the other defendants it is ordered and decreed that it be referred to Mr. — one &c. to take an account of the rents and profits of the charity estate accrued since the death of J. B. son of the testator N. B. which have been received by the defendant R. L. and the other defendants or any of them, or by any other person &c. the Master to make all just allowances &c. and particularly an allowance of &c. ; And it is ordered and decreed that what shall be coming on the balance of the said account be divided into two equal moieties, whereof one moiety is to be paid to or retained by the defendant the Corporation of C. according to the said testator's will, and the other moiety is to be paid or retained by the defendants the ministers of &c. for the charitable purposes devised by the said will

concerning the moiety to be paid to the minister of those parishes; And it is ordered that any of the relators and the Corporation of the city of C. do produce before the said Master a scheme or schemes for the application of what shall be coming on the balance of the said accounts for the moiety of the said rents and profits for the poor inhabitants of the said city of C., and also for that moiety of the growing rents and profits of the said charity estate in such manner as may be most beneficial for said poor inhabitants, and the said Master is to state the same with his opinion thereon; And the number of the trustees mentioned in the last conveyance of the said charity estate being reduced to six, let eighteen other proper persons of the borough of C. or inhabiting near thereto be appointed with the approbation of the Master to be feoffees and trustees of said charity estate, and let the relators and defendants be at liberty to propose proper persons before the Master for that purpose; And when eighteen such persons shall be appointed by the said Master, let defendants, the surviving trustees, convey the said charity estate to the said eighteen persons and their heirs to and upon the charitable uses and trusts declared in the said schedule annexed to —; And let the Master settle the conveyances in case the parties differ about the same.

schemes to be produced before the Master for the application of one moiety of such balance, and of the growing rents;

new trustees to be appointed with the approbation of the Master,

and the surviving trustees to convey the charity estate to them to the charitable uses.

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VI. *Another form of a decree directing the appointment of new trustees of a charity estate jointly with the surviving trustees.*

And it being admitted that the trustees of the said charity were reduced to three, it was ordered that nine proper persons should be appointed with the approbation of the said Master to complete the said number of twelve, and when such persons should be appointed, the three remaining trustees should with the approbation of the Master make conveyance of the said charity estate to the use of themselves and the new trustees so to be appointed, subject to the same charitable uses and trusts.

VII. *Decree on a bill by creditors against an executrix.*

Whereupon &c. his Honor was pleased to order and decree that it should be referred to Mr. S. one of the Masters of this honorable court, to take an account of what was due to the plaintiffs and to all other the creditors of the said testator A. I. and of his funeral expenses, and to compute interest on such of his debts as carried interest after the rate of interest they respectively carried; and the said Master was to cause an advertisement to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose; and such of them who should not come in and prove their debts by the time so to be limited were to be excluded the benefit of the said decree, but such persons not parties to the said suit who should come in before the said Master to prove their debts, were, before they should be admitted creditors, to contribute to the plaintiffs their proportion of the expense of the said suit to be settled by the said Master; And it was ordered that the said Master should also take an account of the said testator's personal estate come to the hands of the said C. I. his executrix, or to the hands of any other person or persons by her order or for her use, and the said testator's personal estate was to be applied in payment of his debts and funeral expenses in a course of administration; and for the better taking of the said accounts &c. [*usual directions given.*]

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VIII. *Part of an order directing the delivery of deeds and attested copies, and the execution of deeds of covenant for the production of deeds.*

Let such of the title-deeds and writings as relate solely to the estate comprised in lot —, and also such as relate to the same estate jointly with other estates of less value, be delivered to —, he submitting to produce the last-mentioned deeds and writings on necessary occasions and to enter into covenants for that purpose and to give attested copies thereof if required at the expense of the party requiring the same; and as to such of the title-deeds and

writings as relate to the estate comprised in the said lot — jointly with other estates of greater value, he is to have attested copies if required at the expense of the estates, and the persons entitled to such estates are to execute to him the like deed or deeds of covenant to produce the same on necessary occasions; and in case any dispute shall arise between the parties touching the copies of any particular deeds or writings relating to the title, the Master is to settle the same.

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IX. *Decree for dower out of freehold and copyhold lands.*

His Lordship doth order that it be referred to the Master to inquire what freehold lands the said S. M. died seised of wherein the plaintiff B. M. is dowerable, and also to inquire what copyhold or customary lands the said S. M. died seised of wherein plaintiff B. M. is entitled to dower or any other estate by the custom of the manor wherein the said copyhold or customary lands or any of them do lie; And that the said Master do assign to the plaintiff B. M. her dower in such freehold lands and tenements, and also her dower and widow's estate in such customary or copyhold lands and tenements, and the said Master is to assign and set out particular lands and tenements for that purpose; And after the said lands and tenements shall be set out and ascertained, it is ordered that the defendant do deliver possession to plaintiff B. M. of the lands and tenements that shall be so set out and ascertained for the said dower or widow's estate of plaintiff B. M., and the tenants thereof are to attorn and pay their rents to the said plaintiff B. M.; And it is ordered and decreed that the Master do take an account of the rents and profits of the said freehold and copyhold or customary lands and tenements whereof the said S. M. died seised, accrued since the death of the said S. M., which have been received by the said defendant or by any other person by his order or for his use; And that one-third part of what shall be coming on said account of the rents and profits of such freehold lands and tenements is to be paid to plaintiff B. M. by the said defendant in respect of her dower out of such lands and tenements, and that such part of what shall be coming on said account of rents and profits of the said copyhold or customary lands and tenements as the said plaintiff B. M. shall appear to be entitled to in respect

Inquiry directed of what freehold and copyhold lands deceased died seised;

Master to assign plaintiff her dower in the freehold and her widow's estate in the copyhold lands, and to set out the particular lands,

and when set out, possession thereof to be delivered to the plaintiff, and the tenants to attorn;

An account to be taken of the rents of the freehold and copyhold estates accrued since the death of the plaintiff's husband, and one-third part of what shall be found due to be paid to the plaintiff by the defendant;

Defendant to produce all deeds, &c.

Master to make all just allowances;  
Defendant to pay the plaintiff her costs up to the hearing;

Subsequent costs reserved;

Plaintiff intending to controvert the deceased's will, further directions reserved.

of her said dower or other widow's estate in such copyhold or customary lands and tenements, is to be paid to the said plaintiff B. M. by the said defendant; And for the better taking the said account and discovery of the matters aforesaid the said defendant is to produce before the said Master upon oath all deeds writings papers and books of account in his custody or power relating to the matters in question, and both sides are to be examined upon interrogatories as the said Master shall direct, and the said Master is to make unto both sides all just allowances; And it is ordered that the said defendant do pay unto the plaintiff B. M. her costs of this suit to this time to be taxed by the said Master, of which the said Master is to make a separate report; And his Lordship doth reserve the consideration of subsequent costs as between the plaintiff B. M. and the defendant until the Master shall have made his report; And it being declared by the counsel for the plaintiff that they do intend to controvert the probate of the will of the said S. M. insisted on by the said defendant in the Ecclesiastical Court, his Lordship doth reserve liberty to any of the parties to apply to the court for further directions in respect of any other demands made by the bill in respect either to the real or personal estate of the said S. M. as occasion shall require.

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#### X. Decree for foreclosure.

His Lordship doth order and decree that it be referred to Mr. E. one &c. to see what is due to the plaintiff for principal and interest on his mortgage and to tax him his costs of this suit, and the defendant is to pay unto the plaintiff what shall be reported due to him for such principal interest and costs within — after the said Master shall have made his report, at such time and place as the said Master shall appoint, and thereupon the said plaintiff is to reconvey the said mortgaged premises free and clear of all incumbrances done by him or any person claiming from by or under him, and to deliver up upon oath unto the defendant or to whom he shall appoint, all deeds and writings in his custody or power relating thereto; But in default of the said defendant paying unto the said plaintiff such principal interest and costs as aforesaid by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all equity of redemption of in and to the said mortgaged premises.

XI. *Minutes of a decree by consent, directing the plaintiff to confirm the defendant's jointure in the settled estates, and when confirmed, the defendant to produce all deeds in her possession or power relating thereto.*

And the plaintiff Sir W. A. now offering to confirm the jointure of the defendant C. A. in the several estates settled upon her in jointure by the deeds dated &c., Decree that plaintiff Sir W. A. do confirm the jointure of said defendant C. A. in all the said estates as the Master shall direct; and let the Master settle the deeds or assurances for the confirmation of such jointure in case the parties differ about the same; And after such jointure shall be confirmed as aforesaid, let defendant C. A. produce before the said Master upon oath all deeds and writings in her custody or power relating to the several estates comprised in the settlement dated &c.; and reserve the consideration of all further directions until after the deeds and writings shall be produced.

XII. *Minutes of a decree declaring the plaintiff to be entitled to a jointure, and directing the defendant to convey to her the lands to be set out by the Master.*

Declare that plaintiff is entitled in equity to have a jointure of £—— a-year made good to her out of the estate in question according to the settlement &c.; and therefore refer it to the Master to set out and allot so much of the lands and premises comprised in the said settlement of &c. as shall amount to and not exceed the value of £—— a-year, subject to taxes and repairs, for plaintiff's jointure for her life; And let defendant M. H. settle and convey such lands and premises so to be set out and allotted as aforesaid to plaintiff for her life for her jointure by such conveyances and assurances as the said Master shall think fit, free from all incumbrances done by defendant M. H., and let all proper parties join in such conveyances as the said Master shall direct; And let defendant M. H. deliver possession to plaintiff of the lands and premises which shall be so allotted and set out with the appurtenances; And let the plaintiff enjoy the same for her life against defendant M. H. and all persons claiming under him or E. H. her late husband deceased, and let all deeds and writings relating to the estate in question be produced before the Master upon oath.

Reference to the Master to set out lands of sufficient value,

defendant to execute proper conveyances,

and deliver possession of the lands to be set out.

\* XIII. Decree directing the execution of several leases;—accounts to be taken of principal and interest due on several mortgages,—and also of the arrears of rents in respect of different parts of the premises in question according to certain drafts of leases and agreements between the parties, with a direction to the Master to set an occupation rent on other parts of the premises, and to ascertain what is due in respect thereof; a set-off directed as between the amount of the account of rent to be found due from one defendant, and the amount of principal and interest to be found due on her mortgage; the bill dismissed as to certain defendants with costs; there having been several former hearings which proved fruitless, special directions given as to the costs of them.

At the Rolls.

Master of the Rolls.

Monday the 26th day of November, &c. 1827.

Between S. Page - - - - - Plaintiff,  
and

J. Brown, J. Harriss, &c. Defendants,  
By original bill;

And

Between S. Page - - - - - Plaintiff,  
and

P. F. Page - - - - - Defendant,  
By supplemental bill.

These causes coming on the 12th, 13th, 15th, and 19th days of November 1827 to be heard and debated &c. the substance of the plaintiff's bill appeared to be, That &c. [*after stating the substance of the bill, the decree set forth the prayer of the bill as follows:*] That an account may be taken of what is now due to the plaintiff under and by virtue of the aforesaid agreements or otherwise; And that the said agreement may be specifically performed and carried into execution, and that a lease of the said premises thereby agreed to be demised to the plaintiff may be executed by all necessary parties, the plaintiff being ready and willing to do all things to be done therein on his part and behalf; And that an

Original bill, praying that an account may be taken of what is due to the plaintiff, that an agreement may be performed, and a lease executed to the plaintiff;



account may be taken of what is due from the said Mary Linwood in respect of the said sum of £1000 so agreed to be paid to the plaintiff with interest thereon from the time the same ought to have been paid, and also in respect of the said annual rent of £250 with interest from the times such annual sums ought respectively to have been paid, and that what shall be so found to be due may be paid to the plaintiff, and that the plaintiff may be declared to have a lien upon the said Mary Linwood's estate and interest in the said premises for the payment thereof, and that the same may be raised and paid thereout accordingly in reduction of the plaintiff's said demand; And that an account may be also taken of what is now due in respect of the said two annual sums of £200 and £200 so agreed to be paid by the said T. Willows together with interest thereon from the times the same ought respectively to have been paid, and that the plaintiff may be declared to have a lien upon all the estate and interest of and in the said premises which belonged to the said Thomas Willows for payment of the amount of what shall be so found to be due, together with so much of the plaintiff's demands as shall remain unpaid by the means aforesaid, and that the same may be raised and paid thereout to the plaintiff accordingly, and that the plaintiff may have the full benefit of the aforesaid securities for the payment of what is so due to him; And if necessary for that purpose, that such of the rents and profits of the said premises, if any, as are not applicable to the payment of the plaintiff's aforesaid demands may be applied in discharging all such incumbrances upon the said premises as have priority to the plaintiff's aforesaid demands; And that the mortgage debt due to the said John Broom and Herbert Broom may be considered as satisfied to the amount of the rents and profits of the said premises received by them and of the occupation value of such parts of the said premises as have been occupied by them, and that accounts of such rents and profits and occupation value may be taken accordingly; And that all other necessary directions may be given for the purpose of paying or securing to the plaintiff the payment of what is so due to him out of the said premises; And that some proper person may be appointed receiver of the said premises, and particularly of such parts thereof as were so agreed to be demised to the plaintiff for securing his aforesaid demands; And that the rents and profits thereof may be applied according to the provisions of such agreements, and to be relieved is the scope of the bill; [*and after stating the substance of the defendants' answers, the decree proceeded thus:*] That T. Willows being dead, the plaintiff thought it advisable to institute a suit in the Prerogative Court for the pur-

that an account may be taken of what is due from a defendant in respect of a sum of £1000 and interest thereon, and also in respect of the rent agreed to be paid by her and interest thereon, and to have a lien on her part of the premises for the amount;

that an account may be taken of what is due in respect of two annual sums agreed to be paid by another defendant with interest thereon, and to have a lien on his interest in the premises;

And if necessary that such of the rents not applicable to the payment of plaintiff's demands may be applied in discharge of prior incumbrances; that a mortgage debt due to two other defendants may be considered as satisfied to the amount of rent received by them and of the occupation value of such part of the premises as was occupied by them, and to have an account taken thereof accordingly, and for the appointment of a receiver.

Recital in the decree that a defendant being

dead, letters of administration limited to the matters in question were granted to the defendant in the supplemental suit,

and that the plaintiff thereupon filed a supplemental bill, praying to have the same relief against the administrator as if originally a party.

pose of procuring administration of the estate and effects of the said T.W., and accordingly letters of administration of the estate and effects of the said T. W. were duly granted by such court to P. F. P., but limited to the purpose only of attending supplying substantiating and confirming the proceedings already had or which might be thereafter had in the aforesaid cause or suit or in any other cause or suit which might thereafter be commenced in this or any other court between the aforesaid parties or any other parties touching or concerning the aforesaid premises, or until a final decree should be had and made therein, and the said decree carried into execution, and the execution thereof finally completed; And the plaintiff thereupon filed the supplemental bill in this court against the said defendant P. F. P., stating the several matters aforesaid, and thereby praying that the plaintiff may have the same relief against the said P. F. P. as if he had been originally a party defendant to the said original bill; Whereto the counsel for the defendant P. F. P. alleged that he by his answer saith he admits &c. [*admitting the letters of administration granted, the proceedings had in the original cause, and claiming such interest as he might appear to be entitled to as such personal representative.*] Whereupon and upon debate of the matter and hearing an exhibit &c. &c. read, and what was alleged by counsel on both sides, his Honor did order that this cause should stand for judgment; And this cause standing this present day in his Honor's paper of causes for judgment accordingly, in the presence of counsel learned on both sides, and the defendants J. B. and R. B. by their counsel at the bar now consenting that the four several exhibits marked &c. being drafts of leases in the possession of the defendant M. L. and proved by her in this cause shall be considered by this court as proved by the plaintiff against the said defendants J. B. and R. B., HIS HONOR DOTH DECLARE that the plaintiff is entitled to have the lease to him, the two several leases from him, and the underlease from the defendant Mary Linwood to him executed by all proper parties according to the drafts prepared by Mr. White in the year 1809 and approved of on the part of the plaintiff, with this difference, that the lease thereby proposed to have been made by the plaintiff to Thomas Willows in the bill named is to be made to John Broom, H. Broom, and John Harriss or those who represent them, who by virtue of the agreement in the pleadings mentioned as between the said T. Willows and the said J. B., H. B. and J. H. are entitled thereto, and with this difference also, that if the mortgage to the defendant John Broom and the late Herbert Broom shall

Decree.—Leases and underleases to be executed according to the drafts originally prepared and approved of, with certain variations, as stated in the decree;

appear to be satisfied, the plaintiff Samuel Page is entitled to have the lease granted to him for the additional term of fifty years at the rent of 40s. per annum; And it is ordered that all proper parties do execute the same and counterparts thereof; And it is further ordered that as soon as such lease shall have been executed to the said plaintiff as aforesaid, the said plaintiff do forthwith grant and execute to the said defendant M. Linwood a demise of the said premises agreed to be let to her according to the lease prepared by the said Mr. White, to hold for forty-seven years and three quarters wanting ten days from the 25th day of December 1807, at the annual rent of £250 to be paid and payable according to the said agreement of the 21st November 1808; And his Honor doth declare that upon such lease being executed by the said plaintiff, the plaintiff will be entitled to receive from the said defendant M. Linwood the sum of £1000 agreed by the said agreements of the 27th June 1806 and 21st November 1808 to be paid to him, with interest on the same after the rate of 4 per cent. per annum, according to the instalments and from the respective times when such instalments were to have been paid according to the said agreement of 21st November 1808 and the draft of the said lease prepared by the said Mr. White; And it is ordered that it be referred to the Master in rotation to take an account of what is due for principal and interest in respect of the said sum of £1000 as aforesaid; And it is ordered that the said Master do also take an account of what is due from the said defendant Mary Linwood to the plaintiff in respect of the rent of £250 per annum from the 25th day of December 1807, being the time from which such rent was reserved &c. &c. payable in and by the said draft lease prepared by Mr. White as aforesaid; and the said Master in taking such last-mentioned account is to make unto the said M. L. all just allowances for and in respect of all or any rates taxes assessments and other proper disbursements paid laid out assessed and made upon or by her; And it is ordered that the said Master do take an account of what is due to the said M. L. for principal and interest in respect of her mortgage in the pleadings mentioned, and also an account of the costs charges and expenses which she has paid been put to or sustained in certain suits entitled "Browning against Willows," and "Broom against Linwood," or in any other suit or suits brought against them as mortgagee or in any wise incidental to or respecting the said mortgage; and it being alleged by the counsel for the plaintiff and the said M. L. that it has been agreed that the said plaintiff shall become the assignee of the said mortgage, It is ordered that

Upon the execution of the lease to the plaintiff, he to execute a lease to defendant M. L. of certain portions of the premises according to the draft lease originally prepared, and thereupon plaintiff to be entitled to receive from her a sum of £1000 with arrears of interest thereon;

An account to be taken of principal and interest due in respect of the £1000, also an account of the arrears of the rent of £250 due from defendant M. L., the Master to make her all just allowances in respect of rates, taxes, &c.

An account to be taken of principal and interest due to her in respect of her mortgage, and of costs sustained by her in certain suits or in relation to her mortgage;

The plaintiff having agreed to become assignee of

the mortgage, the difference of the accounts directed to be taken as between him and the defendant M. L. to be paid according to the result of the balance between such accounts; and thereupon M. L. to transfer her mortgage to the plaintiff;

The Master to tax her costs of the suit and incidental to the different hearings as between solicitor and client, the same to be paid by plaintiff, and thereupon the bill to be dismissed as against her;

The consideration reserved by whom such part of the costs above directed to be paid by plaintiff, as shall be properly costs as between party and party in the cause, shall be ultimately borne.

Plaintiff declared to be entitled to a charge for supplying the deficiency of two yearly sums of £200 to answer his demands, or until his demands are satisfied;

Such charge not to take effect until a prior mortgage is satisfied;

if the same shall appear to be satisfied, the

the difference between the amount of the account of the principal interest and costs of the mortgage and the amount of the account of the rent and of the before-mentioned sum of £1000 and interest after making such allowances thereout as aforesaid above directed to be taken, be paid by the said plaintiff to the said Mary L. or be paid by the said M. L. to the plaintiff according to the result of the balance between such accounts, and if it shall be found that the said mortgage debt with interest and costs as aforesaid is satisfied, or upon the balance of such mortgage account being paid to the said M. L. by the plaintiff, and such underlease being executed to the said M. L. by the plaintiff as hereinbefore directed, It is ordered that the said M. L. do thereupon transfer and assign her said mortgage unto the said plaintiff S. P. or as he shall direct, and all proper parties are to join in such transfer and assignment, which is to be settled by the said Master in case the parties differ about the same; And it is ordered that the said Master do tax the said M. L. her costs of this suit, and of all costs charges and expenses of the different hearings in this suit or incidental thereto as between solicitor and client; And it is ordered that the said plaintiff do pay the same to the said M. L.; And it is ordered that thereupon and upon the said M. L.'s doing what she is hereinbefore directed to do, the plaintiff's bill do stand dismissed out of this court as against the said defendant M. L.; And his Honor doth reserve the consideration as between the said plaintiff and the other defendants by whom so much of the costs hereby directed to be in the first place allowed and paid by the plaintiff to the defendant M. L. as is or shall be properly costs as between party and party in this cause, shall be ultimately borne, until after the said Master shall have made his report; And his Honor doth declare that the plaintiff ought to be considered as having a charge upon the several premises in the pleadings mentioned for the purpose of supplying the deficiency, if any, of the rent of £200 a-year to be reserved to him by the lease before mentioned, which was agreed to be granted to Thomas Willows, and also for the payment of an additional sum of £200 per annum during the term of forty-eight years and three quarters of a year wanting ten days mentioned in the deed-poll of the 26th November 1807, or until such time as the plaintiff's demands are satisfied, and to have a proper deed executed for that purpose, but such charge is not to take effect until it shall appear that the mortgage (for £3000) which was held by the defendant John Broom and the deceased Herbert Broom is satisfied, but in case it shall appear that such last-mentioned mortgage is satisfied, then It is ordered

that the said Master do settle and approve of a proper deed for securing such two rents-charge accordingly; and in case it shall appear such last-mentioned mortgage is satisfied, then It is ordered that the said Master do compute interest upon the sum of £13,290. 1s. 6d. from the 25th day of March 1809 according to the acknowledgment of the said Thomas Willows dated the 19th day of July 1810, after the rate of £5 per cent. per annum, and according to the agreement of the 27th June 1806; but in case it shall appear that such mortgage as last aforesaid is not satisfied, then it is ordered that such last-mentioned account be postponed until the further order of the court; And it is ordered that the said Master do take an account of what is due from the defendants J. Broom and John Harriss or either of them or the estate of Herbert Broom deceased to the plaintiff in respect of the rent of £200 a-year from the 25th December 1807 according to the draft prepared by Mr. White, and according to the said agreement of the 27th June 1806, up to the date of the report to be made by the said Master; And it is ordered that the said Master do also take an account of what is due from the defendant J. Broom and John Harriss or either of them or the estate of Herbert Broom deceased in respect of the rents reserved by the lease of the 2d day of August 1806, and the agreement of the 30th day of June 1808, and in respect of any other rents of the premises or any part thereof received by them or any or either of them or by any other person or persons by their or any or either of their order, or for their or any or either of their use; And it is ordered that the said Master do set an occupation rent on such part (if any) of the premises not included in such lease or agreement of which they or any or either of them shall have had a valuable occupation, or which would have produced rent but for their or his wilful default, and ascertain what is due in respect thereof; And it is ordered that what he shall find due on such several accounts or any of them be set against what he shall find due in respect of the principal and interest of the mortgage for £3000 which was vested in the defendant J. Broom and the said H. Broom deceased; And it is ordered that the said Master do ascertain and state whether after so doing any thing and what remains due upon such mortgage, or when by such means the same was paid off; And it is ordered that he do for such purpose take the account of principal and interest on such mortgage; And it is ordered that the Master do take an account of the rents and profits of the said premises or any of them received by the defendant R. Rosser or by his order or for his use under the deed of the 20th day of September 1806; And his

Master to settle a deed for securing the two rents-charge, and to compute interest upon the amount of the plaintiff's demand, according to certain instruments;

but if not satisfied, such last-mentioned account to be postponed until further order;

an account to be taken of all rent due to the plaintiff from other defendants, and the estate of a deceased party, according to certain instruments, and in respect of any other rents received by them or for their use,

the Master to set an occupation rent upon such part of the premises not included in a lease and agreement, of which said defendants had a valuable occupation, or which would have produced rent but for their wilful default, the amount to be found due on such accounts to be set off against the amount of principal and interest to be found due in respect of a mortgage vested in the defendants;

An account to be taken of rent re-

ceived by another defendant, the question as to his liability for any further rent reserved;

The parties to be examined upon interrogatories, and to produce all deeds, papers, &c.,

the Master to make all just allowances, and to be at liberty to make separate reports, and to state special circumstances.

Directions as to costs.

Honor doth reserve the question whether he is liable for any and what further portion of the rents and profits of the said premises; And it is ordered that the Master do also take an account of what rents and profits of the premises or any of them were received by the defendant R. Rosser and the deceased R. S. White jointly or by their order or for their use, and what has become thereof; And for the better taking of the said accounts and discovery of the matters aforesaid, the parties are to be examined upon interrogatories, and to produce on oath before the said Master all deeds books papers and writings in their custody or power relating thereto as the said Master shall direct, who in taking of the said accounts is to make unto the parties all just allowances, and the said Master is to be at liberty to make a separate report or reports as to any of the matters hereby referred to him, and to state any special circumstances at the request of either of the parties as he shall think fit; And it is ordered that the plaintiff do pay unto the defendants E. Willows, Sarah M. Sankey, John Hanbury, and Daniel Sutton their costs of this suit to be taxed by the said Master in case the parties differ about the same, including the costs of all the former hearings; And it is ordered that thereupon the plaintiff's bill do stand dismissed out of this court as against the said four last named defendants; And his Honor doth reserve the consideration of all parties' costs so far as not hereinbefore provided for, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master shall have made his general report; And his Honor doth declare that the plaintiff in his costs is not to be allowed the costs of more than one hearing, and any of the parties are to be at liberty to apply to this court as there shall be occasion.

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\* XIV. *Decree declaring the legitimacy of the plaintiff, as the eldest son of his father, as established by the verdict of a jury on the trial of an issue; also declaring certain agreements entered into by the plaintiff with a younger brother to be void, (the grounds on which such decree was founded being inserted in the decree,) and directing a reference to the Master to take an account of monies paid by the plaintiff to the defendant, and to compute interest thereon, the amount to be paid into the bank subject to further order; decree made without prejudice to any claims which the defendant might establish against the plaintiff. (Gordon v. Gordon, 3 Swanst. 400, 478.)*

The decree stating that the cause now stood for judgment, and reciting the pleadings, and that the parties proceeded to a trial of the issue on the 27th February 1818, when the jury found that the plaintiff was and is the legitimate son of Colonel Harry Gordon, proceeds thus:—"His Lordship doth declare that it is established by the verdict found in this matter that the plaintiff is the legitimate son of his father, and his Lordship doth declare that Peter Gordon his elder brother must also have been legitimate, and consequently that the defendant James Gordon was not the heir at law of Harry Gordon the elder, nor of the said Peter Gordon, and farther that it appears that if Peter Gordon was not legitimate, yet if having survived Harry Gordon the elder he became entitled in fee in law or equity to the estates in question by virtue of his father's will mentioned in the agreement of 1790 to bear date the 5th day of August 1787, the defendant James Gordon could not be entitled at his father's death or at the death of Peter Gordon to the estates of Harry Gordon the father as his heir at law, or have any well-founded claims to the said estates as such heir at law; that nevertheless the agreement of 1790 purports to be made between the plaintiff Harry Gordon and the defendant James Gordon claiming to be the heir at law of the testator Harry Gordon the elder, and as such, making certain claims upon the estates therein mentioned, over and besides the provisions made for him by the will and codicil of 1776, 1782, and 1787, recited in the said agreement of 1790, and which will and codicil are thereby by the said plaintiff and defendant admitted to have been made by the said Harry Gordon the elder; that it further appears from

the recitals of the said agreement of 1790, that if Peter Gordon had been illegitimate and Harry Gordon the younger also illegitimate, and if the estates were vested in Peter Gordon by virtue of the said will of 1787, the said James Gordon could not as heir at law of his father or otherwise by his contract or by any other his act authorize or give title to Harry Gordon the younger to enter upon the said estates or empower him effectually to require the mortgagees mentioned in the said agreement to reconvey to him the said Harry Gordon the younger upon payment of what was due to them, or vest in the said Harry Gordon the younger any interest in the said estates, save the said James Gordon's interest as a legatee; that it also appears that the other agreement of the 4th day of February 1805, as well as the said agreement of 1790, was made between the parties thereto in consequence of the supposed illegitimacy of the plaintiff negated by the before-mentioned verdict; and that the defendant, if the plaintiff was illegitimate, had no title to the lands in America, nor any right for his own behoof to hinder the plaintiff from obtaining possession thereof subject to the charges thereon, in case such lands under the grant thereof were vested in his father, and passed by his father's will to Peter Gordon; And his Lordship doth declare that if the plaintiff could not be relieved against the said agreements on the mere ground of mistake respecting his legitimacy, or on the ground that the said agreements were entered into in consequence of mistake and misapprehension respecting such legitimacy, yet that the plaintiff is entitled to be relieved against the same as having been also entered into under a misapprehension and misunderstanding that the said James Gordon the defendant had such right and interest in the said estate as would enable him effectually to give and assure to the plaintiff those benefits and interests which, for the considerations mentioned in the said agreements, are contracted or agreed to be given and assured to him by the said James Gordon; and inasmuch also as it is established by the evidence in the cause, that prior to the entering into the said agreement the defendant James Gordon had been informed and knew that a ceremony of marriage had previously taken place between his father and mother before the birth of the plaintiff (being the marriage which by the aforesaid verdict has been established as a valid marriage), and the said agreement having been entered into with such previous information on his part, and without such information being imparted to the plaintiff, who might, if the said James Gordon had communicated to him that information, have been able by due inquiry to prove his legitimacy as he has since proved the same after he had discovered



that such ceremony had previously taken place; His Lordship doth therefore declare the agreements in the pleadings mentioned, bearing date the 30th day of March 1790, and the 4th day of February 1805, to be void, and doth order and direct that the same be delivered up to be cancelled; And it is further ordered that it be referred to Mr. Dowdeswell to whom this cause stands referred, to take any account of all sums of money paid by the plaintiff to the said defendant James Gordon or to any other person or persons by his order or for his use in respect of the annuity mentioned in the agreement bearing date the 31st day of March 1790, and of the sums of £4600 and interest and £1040 in the said agreement also mentioned; And it is ordered that the said Master do compute interest on the respective sums paid by the plaintiff to the defendant James Gordon from the respective times of paying the same, and for the better taking the said account &c.; And it is ordered that what the said Master shall find to be the amount of such sums and interest, be paid into the bank with the privity of the Accountant-General of this court on the credit of this cause, subject to the further order of this court; And his Lordship doth reserve the consideration of costs &c.; And this is to be without prejudice to any claims which the defendant James Gordon may have or can establish against the plaintiff in respect of the estate or effects of Harry Gordon the elder deceased or Peter Gordon deceased or either of them in any suit or proceedings which he may be advised to institute against him and other proper and necessary parties."—Reg. Lib. A. 1820, fol. 1984.

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\* XV. Decree for sale of an estate and payment of mortgagees and judgment creditors according to their priorities.

One account to be taken of what was due to the mortgagees, the Master to tax their costs in equity and at law;

An account to be taken of the rents received, or which but for wilful default might have been received, by certain mortgagees; the amount thereof to be deducted from the amount to be found due for principal, interest, and costs;

An account to be taken of principal and interest due to the judgment creditors;

Judgment creditors to prove before the Master or to be excluded;

The Master to ascertain the priorities of the mortgages, &c. And by consent the estate in question to be sold, and the purchase-moneys applied in payment of the mortgages and judgment creditors according to their priorities;

the surplus to be paid to the mortgagor.

It was declared that one account should be taken of what was due to the defendants the mortgagees for principal and interest on their respective mortgages, and to tax them their costs of this suit and at law; And that the Master should take an account of the rents and profits of the premises comprised in the defendants the Nicholls's mortgage which had been received by the said defendants or by their testator or any of them, or by any person by their or either of their order or for their or either of their use, or which without their or any of their wilful default might have been received; And that what should be coming on the account of the rents and profits should be deducted out of what should be found due to the said defendants the Nicholls's for principal interest and costs; And the Master was also to take an account of what was due for principal and interest to the several judgment creditors who were parties to the said suit, and also to the several judgment creditors of the defendant H., and all the said judgment creditors were to be at liberty to come before the said Master and prove their judgments; And the said Master was to cause an advertisement to be published in the London Gazette, and appoint a peremptory day for that purpose; And such of the said judgment creditors as should not come in by that time were to be excluded the benefit of the said decree; And the said Master was to state the priorities of the several mortgages incumbrances and judgments; And by consent of the defendant T. C. the only acting executor of J. C. esq. deceased another mortgagee, It was ordered that the estate in question should be sold with the approbation of the Master to the best purchaser that could be got for the same; and the money arising by the sale of the respective parts of the estate in question comprised in the mortgages and in the securities of such mortgages be applied in satisfaction of the money due on the respective mortgages according to their respective priorities; And that the money arising by the said sale should be applied in payment of the judgment creditors according to their respective priorities; And if there should be a surplus of the monies arising by sale, it was ordered that the same should be paid to the defendant H. *[with the usual directions for taking the accounts.]*

XVI. *Form of a decree nisi where defendant makes default.*

This cause coming on &c. in the presence of counsel learned for the plaintiff, no one appearing for the defendant, although he was duly served with a subpœna to hear judgment in this cause as by affidavit now produced and read appears, the substance of the plaintiff's bill appeared to be that &c. Whereupon and upon hearing &c. read, and what was alleged by the counsel for the plaintiff, His Lordship doth order and decree that &c.; And this decree is to be binding on the defendant unless he, on being served with a subpœna to show cause against the same, shall at the return thereof show unto this court good cause to the contrary; but before the said defendant is to be admitted to show such cause, he is to pay unto the plaintiff his costs of this day's default in appearance to be taxed by the Master.

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XVII. *Minutes of a decree for a partition;—an infant defendant to have a day to show cause.*

Let a commission issue to commissioners to be therein named to make partition of the estate in question, who are to take the depositions of witnesses to be examined by them in writing and return the same with the said commission, and let the said estate be divided into moieties and set out in severalty, whereof declare one moiety to belong to Mr. N., and the other moiety to plaintiff Sir W. M., and let the respective parties convey their several moieties to each other to hold in severalty according to the respective undivided moieties thereof, and let the Master settle the conveyances in case the parties differ about the same; And until such conveyances shall be made let the several parties generally hold and enjoy their respective divided moieties against each other or any claiming under them; And let the said defendant Miss N. an infant execute the conveyance before directed to be executed by her, unless she, on being served with a subpœna, shall within — months after she shall attain her age of twenty-one years show unto the court good cause to the contrary.

XVIII. *Minutes of a decree for a partition of an advowson in moieties, the bill being dismissed as to one defendant with costs.*

Declare that plaintiff is entitled to have a partition of the advowson of the vicarage of the parish church of W. in K. into moieties, to present by alternate turns, and decree that a partition be accordingly made thereof in moieties between plaintiff and defendant E. S. devisee in the will of J. S.; And for making such partition the plaintiff and defendant E. S. are mutually to execute conveyances to each other, so that plaintiff may hold one moiety of the advowson to him and his heirs, and defendant E. S. may hold the other moiety to her and her heirs, as tenants in common in severalty respectively; And in such conveyance let a clause be inserted that the plaintiff and his heirs and defendant E. S. and her heirs shall present to the said vicarage by alternate turns, and if the parties differ the Master is to settle the conveyances, and the charges of the conveyances are to be borne equally between the plaintiff and defendant E. S.; And it appearing in the cause that J. S. under whom defendant E. S. claims hath since the agreement for the partition or division of the premises presented upon the last avoidance, It is ordered and decreed that the plaintiff do present on the next avoidance being the first turn from this time; And it is further ordered that the plaintiff's bill as against the defendant the heir at law of the said J. S. be dismissed out of this court with costs according to the course of the court, but his Lordship does not think fit to give any costs as between the plaintiff and the defendant E. S.

- \* XIX. *Order for liberty to apply to the Court of King's Bench for payment to the plaintiff and defendants of money paid into the hands of the Master of that court, the amount to be paid into the bank to abide the event of the cause. (Hawkshaw v. Parkins, 2 Swanst. 539, 550.)*

His Lordship doth order that the plaintiff be at liberty to make an application to the Court of King's Bench for payment to him and to the defendants of the money paid by the plaintiff into the hands of the Master of the said Court of King's Bench pursuant to the order of Mr. Justice Bayley on the 23d day of June 1818, and it is ordered that they do pay the same when so received, to be verified by affidavit, into the bank with the privity of the Accountant-General of this court on the credit of this cause to abide the event of this cause, but this order is to be without prejudice to the right of any of the parties to such money or any of the questions in this cause; Reg. Lib. A. 1818, fol. 1281.

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- XX. *Direction to a Master to appoint a receiver for one moiety of the estates in question, the receiver to be at liberty to let the estates with the approbation of the Master.*

And the said Master is to appoint a receiver for one moiety of the estates in question and allow him a reasonable salary for his care and pains therein, such person to be appointed receiver first giving security to be allowed of by the Master, and to be taken before a Master Extraordinary in Chancery in the country if there shall be occasion, duly and annually to account for and to pay what he shall so receive as the court shall direct, and the tenants of the said estates are to pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion, and the said receiver is to pay the balance of his accounts from time to time into the bank subject to the further order of the court.

XXI. *Minutes of an order directing a consignee of an estate in the West Indies (being appointed by the Master pursuant to the decree) to transmit his accounts half-yearly of the produce consigned to him, also to make insurances on the consignments, also to transmit stores and effects for the use of the estate; the defendant to deliver over an inventory of the negroes, &c. on the estate, and the consignee to remit to him such sums as should be laid out in negroes and repairs; the consignee to pass his accounts annually and to pay the balance due into the bank.*

#### OUTLINE OF THE CASE.

R. C. by will devised a plantation at St. C. to his eldest son D. for life with limitations to other children, and directed that the clear produce of his plantation till his debts and legacies should be paid, to be from time to time shipped in such ships as defendant C. his heirs and assigns should direct, and consigned to him, and that his son should send an account every year of the produce, and if he did not, then defendant C. with the consent of his trustees was to put an overseer on the estate.

The bill was brought against the trustees and sons for an account of the rents and profits, and that an overseer or receiver might be appointed of the estate.

The decree referred it to the Master to appoint a proper person in L. to whom the defendant C. should consign and send over the profits of the plantation and houses in question to be disposed of according to testator's will, and defendant C. was accordingly from time to time to consign and send over the profits to such person so to be appointed, and R. S. was appointed consignee.

#### ORDER.

Let R.S., the consignee approved by the Master, twice in every year transmit to defendant C. a true account of the sugars and other produce of the plantation consigned to and received by him upon the respective consignments, and of the sales thereof, and let the said R.S. make insurances upon the sugars and other produce of the plantation that shall be consigned to him in such manner as shall be reasonable with the approbation of defendant D. C. or of such person as he shall appoint, and let the charges thereof be paid out of the money arising by the sale, and let the said R. S. transmit over from the said plantation to D. C.'s attorney at St. C. such stores

provisions and other effects for the necessary use and consumption of the said estate as the said R. C. shall by letter from time to time desire with the approbation of the Master, and let defendant C. deliver over to the said R. S. an inventory of the negroes mills and utensils now upon the plantation, and let the said R. S. pay or remit to the said R. C. such sums of money as shall be reasonably laid out by the said C. in negroes utensils cattle and repairs upon the plantation, to be ascertained by an account to be sent from time to time by the said C. to be verified by affidavit, which sums are to be settled by the Master if the parties differ; And let the said R. S. pass his accounts annually before the Master, and pay what shall appear to be due from him on the balance of his account from time to time into the bank with the privity of the said Accountant-General of this court &c.

**XXII. Minutes of an order directing the appointment of persons to manage an infant's estates in the West Indies, with directions as to remitting the rents and produce; also directing the appointment of a guardian for the infant.**

Let it be referred to the Master to approve of a proper person in the island of B. to manage the plaintiff's the infant's estate there, and receive the rents and profits thereof, and to remit same over to defendants in E. in trust for plaintiff; and what shall be from time to time so remitted by such person so to be approved of as aforesaid to defendants is, after a deduction of what shall be allowed for plaintiff's maintenance, to be placed out at interest &c.

Let it be referred to the Master to approve of a proper person to be appointed guardian of the person and estate of plaintiff E. O. the infant, and he is to state same to the court, and thereupon such further order shall be made relating thereto as shall be just.

And let the Master appoint one or more proper person or persons in the island of B. to manage said plaintiff's the infant's estate there, and to receive the rents produce and profits thereof, and he or they is or are to remit same to a proper person in L. to be approved of by the Master for that purpose; and the said Master is to make such person to whom the same shall be so remitted a reasonable allowance in respect thereof; but such person is first to give security to be approved of by the Master duly to account for and pay what he shall so receive by such remittance as this court shall direct.

\* XXIII. *Decretal order under the stat. 7 Geo. 2. c. 20. upon a petition for redemption of a mortgage, presented by the party entitled to the equity of redemption, defendant to a bill of foreclosure (1).*

At the Rolls.

Master of the Rolls.

Wednesday the 6th day of August &c. 1794.

Between Richard Huson, - - Plaintiff,  
and  
Jane Hewson, - - Defendant.

Recital of the defendant's petition praying a reference to the Master to take an account of the principal and interest due to the plaintiff, and for costs at law and in equity, and upon payment thereof that the plaintiff might re-convey the premises and deliver up all deeds, praying also for an injunction to restrain the plaintiff's proceedings in ejectment;

Whereas Jane Hewson widow did on the 25th day of July last prefer her petition unto the Right Honorable the Master of the Rolls, setting forth that by indentures of bargain and sale dated the 14th day of May 1759 and made between J. H. the petitioner's late husband (in right of the petitioner) the petitioner and M. S. of the one part, and Thomas Gibson of the other part, the said J. H. and the petitioner in consideration of £200 paid to them by the said T. G. did grant and surrender to the said T. G. a messuage or tenement by way of mortgage for securing £200 and interest; that plaintiff has become assignee of the said mortgage, and that the petitioner is entitled to the equity of redemption, and is willing and desirous to redeem the said mortgaged premises, and to pay the plaintiff R. H. all principal money and interest due on the said mortgaged premises, and has applied to the said R. H. and offered to pay the same; that the said plaintiff R. H. notwithstanding in Easter Term last and subsequent to such offer filed his bill in this cause to foreclose the said mortgaged premises, to which the petitioner has appeared and obtained an order for time to answer; and in the same Term the said R. H. served the tenant in possession of the said mortgaged premises with a declaration in ejectment, to which the petitioner has appeared and entered the common rule, and praying that it might be referred to the Masters of this court to take an account of the money due to the plaintiff for principal

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(1) See *Huson v. Hewson*, 4 Ves. 104, 2d edit., and the cases referred to in note (57), *ibid.*; 2 Madd. Ch. Pr. 265, 428; *Præd v. Hull*, 1 Sim. & Stu. 331.



and interest and for costs as well at law as in this court; and that upon payment by the petitioner of what shall be found due upon such account the plaintiff might re-convey the said mortgaged premises to the use of the petitioner her heirs and assigns for ever, and might deliver up to the petitioner all deeds and writings in his custody or power relating to the same, and that in the mean time the plaintiff might be restrained from proceeding in this cause and in the aforesaid ejection and from all other proceedings at law against the petitioner in respect of the matters aforesaid; Whereupon all parties concerned were ordered to attend his Honor in the matter of the said petition this day, and counsel for the petitioner and for the plaintiff this day attending accordingly, upon hearing the said petition and the said indenture dated the 14th day of May 1759 read, and what was alleged by the counsel for the petitioner and for the plaintiff, and the defendant by her counsel admitting the mortgage in the pleadings mentioned, and that the principal money and interest secured thereby are still due to the plaintiff, and now offering to pay the same to the plaintiff, together with his costs in this court and at law, pursuant to the late act of parliament in that case made and provided, His Honor doth order and decree that it be referred to Mr. H. one of the Masters of this court to take an account of what is due to the plaintiff for principal and interest on the mortgage in the pleadings mentioned, and to tax him his costs in this court and at law; and upon the defendant's paying unto the plaintiff what shall be reported due to him for principal and interest and costs as aforesaid within six months after the said Master shall have made his report at such time and place as the said Master shall appoint, It is ordered that the plaintiff do surrender the said mortgaged premises free and clear of and from all incumbrances done by him or any claiming by from or under him, and deliver up all deeds and writings in his custody or power relating thereto upon oath to the said defendant or to whom she shall appoint; but in default of defendant's paying unto the said plaintiff such principal interest and costs as aforesaid by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all right title interest and equity of redemption of in and to the said mortgaged premises; and for the better taking of the said accounts the parties are to produce before the Master upon oath all deeds papers and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct, who in taking of the said account is to make unto the parties all just allowances, and any of the parties are to be at liberty to apply to the court as there shall be occasion.

Decretal order directing a reference to the Master to take an account of principal and interest due, and to tax the plaintiff's costs at law and in equity, and upon payment of the amount reported due within six months after the report, plaintiff to surrender the premises to the defendant, and deliver up all deeds, &c.

But in default of payment defendant to be foreclosed;

Parties to produce all deeds, &c.

Master to make the parties all just allowances.

XXIV. *Decree for an account of tithes.*

Declare that it be referred to the Master to take an account of what is due to the plaintiff from the defendants respectively for all tithes of corn grain and hay and all other titheable matters as well small as great which have arisen accrued and renewed on the land and premises in the occupation of the defendants respectively within the parish of L. in the &c. and the titheable places thereof from —; For the better taking of which account both sides are to produce &c., the Master to make all just allowances; And let the defendants pay unto the plaintiff what shall be found due to him from them respectively, together with the said plaintiff's costs of this suit to this time to be taxed by the Master, and reserve the consideration &c.

XXV. *Decree in a cross-cause for an account of tithes.*

And as between the plaintiff in the cross-cause and the defendants G. and H. it is ordered and decreed that it be referred to the said Master to take an account of the tithes of potatoes growing renewing and arising on the lands held by the said defendants G. and H. in the parish of W. in the county of E. from the year — exclusive, on the taking of which account the Master is to make all just allowances; And for the better taking thereof both sides to produce &c.

And it is ordered and decreed that the said defendants G. and H. do pay unto the plaintiff W. what shall be found due to him upon that account, and also his costs in the cross-cause hitherto to be taxed by the said Master, as far as the same relates to the demand of tithes of potatoes; (subsequent costs reserved.)

*XXVI. Order directing an action of trover to be brought, and that the defendant should make certain admissions.*

Doth decree that the parties do proceed to a trial at law in the Court of King's Bench in London, at the Sittings in the next Term, or at such other time as the Lord Chief Justice of that court shall appoint, in an action of trover to be brought by plaintiff against the defendant T. for — packs of woollens in question in this cause, and the said W. T. is to name an attorney and appear and accept a declaration and plead the general issue; and in order that the property of said goods may be tried on such trial, said defendant is to admit that the goods in question came to his hands, and also to admit a demand and refusal;

And it is further ordered that all proceedings under the said commission and all other books &c. be produced &c. on or before — next as said Master shall direct, and either side is to be at liberty to take copies thereof at their own expense; and it is ordered that such copies thereof be produced at the trial as either side desire, and give notice thereof in writing.

Further consideration reserved till after trial.

*[Faint, illegible text, likely bleed-through from the reverse side of the page.]*

*XXVII. Minutes of an order directing a trial at law in ejectment.*

Let all parties proceed to a trial at law at the next — assizes for the county of S. in an ejectment upon the demise of the now plaintiff, and defendants to name an attorney to appear to the ejectment, and to enter into the common rule to confess lease entry and ouster;

And let the original lease &c. all deeds &c. be produced, and reserve all &c.



XXVIII. *Minutes of an order directing a trial at law, to ascertain whether and when a person became bankrupt.*

Let the parties proceed to a trial at law upon this issue, *whether M. P. did on or before — commit any act of bankruptcy within the intent and meaning of the several statutes relating to bankrupts, or any of them,* and if the jury shall find he did not commit any act of bankruptcy on or before that day, and that he committed an act of bankruptcy at any time afterwards, in such case the particular time when he committed such act of bankruptcy is to be indorsed on the *postea*.

And plaintiff here is to be plaintiff at law &c. &c.

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XXIX. *Order directing a trial at law upon certain issues, with directions in case the jury should find any particular right varying in circumstances from the issues as laid.*

Doth order that the parties do proceed to a trial at law at the next — assizes for the county of Y. upon the following issues, whether &c.

And it is further ordered that plaintiff the mayor and commonalty of the city of Y. be plaintiff at law, and it is hereby referred to Mr. — &c. to settle the issues in case the parties differ about the same; And to the end such trial may be had, defendants are forthwith to name an attorney to accept a declaration and appear and plead to issue;

And in case on said trial the jury shall find any particular right though varying in some circumstances from the issues as laid, it is ordered that the same be indorsed on the *postea*.

Further directions reserved &c.; liberty for either party to apply.

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XXX. *Minutes of an order directing a trial at bar in the Court of King's Bench by a special jury, six of whom to have a view of the premises.*

Let plaintiff P. and defendants proceed to a trial at bar in the Court of King's Bench next — Term or at such time as that court shall think fit, by a special jury of the county of S. on this issue whether &c.

And the sheriff of the county of S. is to attend the Master with his book of freeholders, whereout the names of forty-eight persons are to be taken, and each is to be at liberty to strike out twelve, and the remaining twenty-four are to stand and be returned on the jury, and six of the jury are to have a view of the premises ;

And the plaintiff P. is to be plaintiff at law, and the Master is to settle the issue if the parties differ ;

And to the end said trial may be had, defendants are forthwith to name an attorney to accept a declaration to appear and plead to issue ;

And let both sides produce before the Master all deeds &c., and either side is to be at liberty to inspect and take copies thereof at their own expense, and such of them as either side shall give notice for are to be produced at said trial ; And after said trial shall be had, either party is to be at liberty to apply to the court for further directions.

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XXXI. *Order directing issues to be taken pro confesso, unless the plaintiffs proceed to trial within a limited time.*

Upon opening &c. unless the plaintiffs in the issues do proceed to the trial thereof some time in —, it is ordered that the said issues be taken *pro confesso* as if the same had been tried and found against them, without further motion.

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XXXII. *Minutes of an order directing the plaintiff's bill to be retained for a limited period, with liberty to him to bring an action at law, and in default thereof within the time limited, the bill to stand dismissed with costs.*

Let the plaintiff's bill be retained for ——— months, and in the mean time plaintiff is to be at liberty to bring his action against defendant for what is due to him for the matters complained of in bill, and the same is to be tried at the next assizes for the county of S.;

And both sides are to produce before Mr. S. one &c. upon oath all books &c. on or before &c.; either side to take copies &c.; and such of them as either side shall give notice for are to be produced at said trial;

And in default of plaintiff's bringing such action and proceeding to trial by the time aforesaid, then it is ordered that plaintiff's bill do stand dismissed out of this court with costs to be taxed by said Master;

But in case plaintiff shall bring such action and proceed to trial as aforesaid, then the court will reserve the consideration of all further directions &c.

XXXIII. *Order declaring an account to have been forged, and recommending a prosecution for forgery.*

His Lordship declared he was of opinion that the account produced before him dated &c. is a forged account, and recommended it to plaintiff to prosecute said defendant for forging said account or publishing same knowing it to be forged.

And said account being filed in the office of the Register for filing affidavits in this court annexed to the affidavit made by said J. H., it is ordered that same be carefully preserved in the affidavit office, to the end it may be forthcoming in case any prosecution shall be carried on against the said defendant or any other person for forging the same.

And that the proper officer in the said office do attend with the said account on any trial to be had for such forgery, being paid his fees for such attendance.

\* XXXIV. Decree by the Lord Chancellor reversing an order of dismissal made by the Master of the Rolls, and directing inquiries as to the application of certain trust-moneys and the acts of the trustees thereof relative thereto, and in case the Master should find that either of the trustees had committed a breach of trust, then the Master to state in what such breach of trust took place, and whether the cestui que trust knew of the trustees' liability in respect of such breach of trust previously to her executing a power of attorney. (*Walker v. Symonds*, 3 Swanst. p. 2, 44.)

[The decree on further directions is inserted *postea*, p. 398.]

That the order of dismissal made on the hearing of this cause be reversed, and that it be referred to Mr. Thompson one &c. to inquire and report in whose hands the trust-money mentioned in the pleadings had been since the year 1782, and when the same should appear to have been placed out on any security or securities, to report on what security or securities the same was placed out; And it was ordered that the Master should state specially and particularly the nature of such security or securities when the same were not government or real securities, and also report in whose custody possession order or disposal the instruments of security were from time to time, and that the Master should also inquire and report what were the acts of each of the trustees respectively as to the receipt and placing out of the trust-money from time to time and the possession of the securities for the same; And it was ordered, that such inquiry should be made not only as to the acts of the trustees respectively, but as to the consent permission or privity of each of the trustees respectively to any act of the others or other of them; And that the Master should inquire and report whether the trust-money was at any time and for what time in the hands of any of the trustees without security, and whether the same was so with the consent privity or permission of the others or other of them, and in case upon such inquiries it should appear to the Master that the defendant William Symonds deceased or Thomas Griffith by any act neglect or default committed any breach of trust in respect of which they or either of them were or was answerable personally for the trust-money or any part thereof, that the Master should state in what such breach of trust took place; And it was ordered that the Master should inquire and report whether the plaintiff Loveday previously to her executing the power of attorney in the pleadings

mentioned had any knowledge or notice that by reason of such breach of trust they or either of them were or was so answerable; and it was ordered that the Master should state all special circumstances; And for the better discovery of the matters the parties were to be examined upon interrogatories &c., and his Lordship reserved the consideration of costs and of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the court as they should be advised.—Reg. Lib. B. 1811, fol. 1211.

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\*XXXV. *Decree, on further directions, over-ruling exceptions which had been taken to the Master's report, and declaring that the assets of two deceased trustees were liable to make good a breach of trust by the decree declared to have been committed by the deceased trustees, reserving liberty to their representatives to use the names of the plaintiffs in any proceedings which they might be advised to take against other persons upon giving an indemnity to the plaintiffs to be settled by the Master; an account directed to be taken of principal and interest due in respect of the trust-money, and of the plaintiffs' costs, the same to be paid out of the assets of the two deceased trustees;—the bill dismissed as against one defendant without costs, but without prejudice to any ulterior proceedings. (See the preceding decree, and 3 Swanst. p. 79.)*

The decree ordered that the exceptions be over-ruled as insufficient, and that the sum of £5 deposited with the register &c. be paid to the plaintiffs, and his Lordship declared that the late defendant William Symonds and Thomas Griffith were proved to have committed a breach of trust in respect of which they were answerable personally for the trust-money in question, and that under all the circumstances of the case the plaintiff Loveday Walker ought not to be considered as having relinquished or barred herself from the right to consider them as being so answerable for the said breach of trust, or as having bound herself to accept such provision only in respect of the trust-money as she or William Symonds and Thomas Griffith were or might be entitled to under the trusts of the indentures of lease and release of the 24th and 25th days of March



1797, but that under such circumstances either the plaintiff Loveday Walker under the true construction of the said indentures remained entitled to charge William Symonds and Thomas Griffith personally, or if she was not so entitled under such construction she was not bound to take the benefit of such provisions and relinquish her demands against them personally on account of such breach of trust; And his Lordship declared that William Symonds and Thomas Griffith having made themselves by having executed the said indenture of release and other acts creditors of the defendant Isaac Harris, as in the said indenture of release is mentioned, and the plaintiff Loveday Walker not having been bound to accept the benefit of their demands as such creditors, the plaintiffs were entitled to have such payment made out of and such account directed as thereafter was ordered and directed as to the assets of William Symonds and Thomas Griffith respectively, without compelling an account to be taken of the assets of Nicholas Donnithorne deceased, which appear to be included in the trusts of the said indenture of release, or enforcing in the said suit any demand which by the plaintiffs or on their behalf could be enforced under the trusts of that indenture, but with such liberty reserved to the respective representatives of William Symonds and Thomas Griffith as thereafter provided; And it was ordered that it be referred to the Master to take an account of what remained due to the plaintiffs for principal and interest of the trust-money in question, and that the defendants William Symonds and Thomas Cooke out of the assets of the late defendant William Symonds deceased, and the defendant John Lilly out of the assets of Thomas Griffith pay what the Master should find to remain due for principal and interest on taking the said account, into the bank with the privity of the Accountant-General, to be there placed to the credit of the cause, "The plaintiffs account," subject to the further order of the court, and the plaintiffs were to be at liberty to make such application to the court touching the same as they should be advised; And in case the defendants William Symonds and Thomas Cooke should not admit assets of William Symonds deceased sufficient for the purpose aforesaid, then they were to come to an account before the Master for his personal estate come to their or either of their hands &c. and unless the defendant John Lilly should admit assets of Thomas Griffith, it was ordered that the Master do take an account of his personal estate come to the hands of John Lilly his executor &c.; And his Lordship declared that in case after having satisfied what they were liable to pay under the directions thereinbefore contained, the defendants William Symonds and Thomas Cooke and John Lilly as

such representatives respectively as aforesaid or any representative of Symonds or Griffith respectively should be advised to make any claim or demand against the assets of Nicholas Donnithorne deceased, or against the trust-premises or the trustees in the said indenture of release contained and named, or against the defendant Isaac Harris, which it should be necessary or they should be advised to make in the names of the plaintiffs or any of them, they were to be at liberty to use the names of the plaintiffs or any of them in any such proceedings, they giving to the plaintiffs a proper and sufficient indemnity against the costs and expenses of all such proceedings; And it was ordered that such indemnity be settled by the Master if the parties differ about the same; And it was ordered that it be referred to the Master to tax the costs of the plaintiffs, and that such costs when taxed be paid by the defendants the executors out of the assets of their respective testators; And it was ordered that the plaintiffs' bill as against the defendant Harris be dismissed without costs between the plaintiffs and him, but such dismissal was to be without prejudice to any such proceedings as aforesaid for the benefit of the representatives of the other deceased trustees, either in their own names or those of the plaintiffs or any of them thereafter to be taken relative to the matters in question; And for the better taking of the said accounts the parties were to produce before the Master all books &c.; and the Master was to be at liberty to make a separate report or separate reports of any of the matters aforesaid; And his Lordship reserved the consideration of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the court as there should be occasion.—Reg. Lib. B. 1817, fol. 1977.

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\* XXXVI. *Decree for an account of a testator's personal estate and the annuities and legacies given by his will; the will not being duly executed, the real estate declared to have descended to the testator's daughter and heiress at law a plaintiff, and to be subject to the articles entered into upon her marriage; an annuity in fee granted by King Charles the Second out of the Barbadoes Duties decreed to have become vested under the will in the testator's daughter as a fee-simple conditional, and to be subject to make good the annuities and legacies given by his will in case the personal estate should be deficient. Liberty reserved to the executor to make his election between a debt claimed to be due to him, and a legacy given to him by the will. (Earl of Stafford v. Buckley, 2 Ves. sen. 170.)*

Decree that it be referred to the Master to take an account of the personal estate of the testator Richard Cantillon deceased which has been received by the plaintiffs the Earl and Countess of Stafford and the defendant F. Garvan or any of them or by any other person by their or any of their order or for their or any of their use; Let the Master likewise take an account of the said testator's debts and funeral expenses, and of the annuities and other legacies given by the will, and what is due for the arrears of such annuities; And let the Master compute interest on such of the legacies as carry interest from the end of one year from the said testator's death at the rate of 4 per cent.; And let such personal estate be applied in payment of the said testator's debts funeral expenses annuities and other legacies in a course of administration; And in taking of the accounts of the said testator's personal estate against the said defendant F. G. in case the Master shall find any account stated between him and the administrators during the minority of the plaintiff the Countess of S. (2), he is not to unravel the same; And it being insisted on in the cause that there was a debt due from the testator at the time of his death to the said defendant F. G., declare that the said defendant is not entitled to claim both his

An account to be taken of the personal estate possessed by the plaintiffs and defendant,

also of the testator's debts, funeral expenses, annuities, and legacies; the Master to compute interest on such legacies as carry interest;

accounts stated by the executor during the plaintiff's minority not to be unravelled;

the executor declared not entitled to claim both his debt and

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(2) The executors Garvan and Stoper had renounced probate, and letters of administration with the will annexed were granted during the minority of the testator's daughter, and for her benefit, to the testator's widow, who had intermarried with F. Bulkeley.

legacy, liberty reserved to him to make his election;

directions reserved as to any account of what was due from the testator to his executor;

the residuary personal estate to be ascertained;

certain annuities declared to be given for life, and others so long as the annuitants have issue of their bodies;

the Master to set apart sufficient estate to secure the growing payments, the personal estate to be considered as liable in the first place;

the real estate declared to have descended to the feme plaintiff as heiress at law;

Construction of the bequest of an annuity of £1000 issuing out of the Barbadoes Duties, as vesting in her in equity as a fee-simple conditional;

the limitation over to the nephews of the residuary personal

debt and his legacy given him by the will of the said testator in this cause, but that he has a right to make his election whether he will claim his debt out of the testator's estate or accept the legacy given him by the will after the account of his personal estate shall be taken; And reserve liberty to the said defendant F. G. to make such election after such account shall be taken; And also reserve any directions as to any account of what was due from the said testator at the time of his death to the said defendant F. G. until after such election shall be made; And let the Master state and ascertain what shall appear to be the clear surplus of the said testator's personal estate after payment of his debts funeral expenses annuities and other legacies as aforesaid; And as to the annuities given by the testator's will, declare that the annuities given to his brothers T. C. and B. C. are annuities for life only, redeemable in the manner mentioned in his will, and that the annuities given to the other annuitants are to continue so long as they have issue of their bodies, redeemable in the manner mentioned in the said testator's will; And let the Master consider of a proper part of the said testator's estate to be set apart to secure the growing payments of the said annuities, to which the personal estate is to be considered as liable in the first place; And let the Master state the same unto the court, whereupon such further order shall be made as shall be just; And several questions arising in the cause touching the extent and construction of that clause in the testator's will whereby he has directed the trustees to entail upon his daughter and her issue all his estate and effects after the payment of the jointures to his wife and of his annuities and legacies, with such limitation as therein mentioned, declare that the said testator's will not being executed according to the statute against frauds and perjuries, the testator's real estate in the county of L. is not comprised in or affected thereby, but is descended to the plaintiff the Countess of S. his daughter and heiress at law; But declare that the testator's annuity of £1000 per annum, which was originally created by grant of King Charles the Second to the Earl of Kinnoul in fee, and also the surplus of testator's personal estate arising at the time of his death are subject to the power thereby given to his executors; And declare that the said annuity of £1000 per annum in fee being capable of being settled and limited to the testator's daughter and the heirs of her body, the same did by virtue of his will vest in her in equity as a fee-simple conditional, and that she having had issue is capable of aliening or settling the same; And declare that according to the true construction of the said clause in the will, the limitation over of the residue of the testator's personal

estate to his two nephews the defendants B. C. and T. C. is too remote and void ; And declare also that the said annuity of £1000 per annum subject to make good the annuities and legacies given by the said testator's will in case his personal estate shall be deficient for that purpose, and also the said real estate in the city of L. are subject to and affected by the articles dated the 6th of July 1743 entered into upon the plaintiffs' marriage ; And declare that the interest and profits of the surplus of the testator's personal estate over and above the £200 a-year given for the maintenance of the plaintiff the Countess of S. accrued before her marriage (if any shall be) did by virtue of the said will go to and belong to the plaintiff the Countess of S. ; And declare that the articles ought to be performed and carried into execution, and decree the same accordingly, and let proper settlements conveyances and assurances be executed by the respective parties to the said articles, so far as the deaths of parties will admit thereof, with the approbation of the Master, except so far as the said articles relate to any surplus of the testator's personal estate existing at the time of his death which shall remain after payment of his debts funeral expenses annuities and legacies, touching which surplus his Lordship doth reserve any directions till after the said account shall be taken and the Master shall have made his report ; Let the Master also take an account of the income of the said annuity of £1000 a-year which has been received by the defendant E. or by any other person by his order or for his use ; And in taking of the said account let the Master make unto the said defendant all just allowances ; And it being admitted by the said defendant E. that he has in his hands the sum of £6000 part of the money arising out of that annuity, let the said defendant E. pay the said sum of £6000 into the bank with the privity of the said Accountant-General of this court to be placed to the credit of this cause, subject to the further order of this court ; And the defendant S.W. being the heir at law of her father who was the trustee of the testator's real estate in the county of L., desiring to be discharged from the trusts, let her convey the same to a new trustee to be approved by the Master, at the plaintiffs' expense, subject to the trusts and provisions of the said marriage articles ; And it being admitted that the defendant G. entered into security to the bank of England for the benefit of the testator's estate in respect of certain bank notes burnt in his house, let the said defendant G. be indemnified in respect of such security given by him out of the testator's estate ; And let the Master be at liberty to make separate reports as to the account hereby directed against the defendant E., and as to the account

estate declared to be too remote ; the £1000 annuity and the real estate declared to be subject to the articles executed upon the plaintiffs' marriage ; the income of the residuary personal estate after payment of the allowance for maintenance declared to belong to the feme plaintiff ; her marriage articles decreed to be performed ;

further directions reserved as to the residuary personal estate ;

An account to be taken of the arrears of the £1000 annuity received by one of the defendants, the balance admitted to be in his hands directed to be paid into court ;

the heir at law of a deceased trustee desiring to be discharged, directed to convey the real estate to a new trustee ;

the executor having indemnified the bank against certain notes burnt, directed to be indemnified out of the testator's estate ; the Master to make separate reports ;

all parties to produce books, &c.

costs to be paid out of the estate; subsequent costs, and all further directions reserved.

of what is due to the annuitants for the arrears of their several annuities, and as to any fund to be set apart for securing the said annuities; [And for the better clearing of the several accounts before directed, the usual directions given for production of books and papers, and examination of the parties; the costs of all parties out of the testator's estate; The consideration of subsequent costs and of all further directions, and particularly as to any question that may arise between the interest which the Countess of S. may take and the interest which any child or children she hath had or may have may take in the surplus of the said testator's personal estate reserved until after the Master shall have made his report; Liberty to any of the parties to apply &c. ]

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\* XXXVII. *Decree establishing a will with several codicils thereto, and directing the trusts to be carried into execution, except as to a direction in the will for the accumulation of the interest and dividends of the residuary personal estate and the rents of the real estate during the minority of any person or persons entitled thereto, which is declared to be too remote and void; a grandson of the testator, an infant, declared to be entitled to the devised estates for life, with remainder to his first and other sons in tail general; directions given as to an allowance for his maintenance; the testator's widow having made her election to take under the marriage settlement, declared to be barred of her dower; a trustee declared to be entitled to certain leasehold premises for his own benefit, and special directions given as to prospective and retrospective allowance to be made to him for his trouble. (Marshall v. Holloway, 2 Swanst. 432. 450.)*

April 22, 1820.—His Lordship doth declare that the will of Thomas Holloway the testator &c. dated &c. and the three several codicils of the testator dated &c. are respectively well executed and proved, and that the trusts thereof ought to be carried into execution, except in so far as the said will directs the laying out and investing the dividends interest and annual proceeds of the stocks and securities in and by the said will directed to be purchased with the

surplus of the said testator's personal estate after the payment of his debts funeral and testamentary expenses and legacies, and the rest of his personal estate, and also the clear yearly rents and profits of his real estates from time to time, and when and so often and during all such times as any person or persons beneficially interested in or entitled to his real or personal estates under the trusts therein-after declared thereof should be under the age of twenty-one years, and the adding all such investments to his personal estate in order to accumulate the same; And his Lordship doth declare that such direction to lay out and accumulate the said rents and profits interest and dividends is too remote and void in law; And his Lordship doth declare that the defendant the infant H. F. K. Martelli is entitled in possession to the rents and profits of the said testator's freehold and copyhold and leasehold estates, and to the dividends interest and annual proceeds of his personal estate and effects for and during the term of his natural life, with remainder to the first and other sons of his body lawfully to be begotten successively, according to seniority of age, and the heirs of their bodies respectively, with such remainders over as in the said will and codicils in that behalf respectively contained.—The decree after the usual directions for an account of the personal estate of the testator and the rents and profits of his real estates received by the plaintiffs, proceeded thus:—

It appearing that the defendant Horatio Martelli the father of the said defendants the infants, is dead, it is ordered that the said Master do inquire and state to the court by whom the said defendant the infant H. F. K. Martelli has been maintained since the decease of the said testator, and what sums of money have been paid in respect thereof and by whom, and what will be proper to be allowed for his maintenance and education for the time past, and to whom, and also what will be proper to be allowed for his maintenance and education, and out of what fund for the time to come, and to whom, and in making such allowance the said Master is to have regard to the situation and circumstances of the other defendants the younger brothers and sisters of the said H. F. K. Martelli, and the said Master is to be at liberty to make a separate report &c. ; And the defendant Ann Holloway having elected to take the provision made for her by the indenture of settlement in the pleadings in this cause mentioned to bear date the 17th day of November 1798, in lieu of her dower thirds and free-bench in and out of the said testator's freehold and copyhold estates, his Lordship doth declare that the said defendant Ann Holloway is barred of all claim in respect of such dower or thirds and free-bench, and

An inquiry directed as to the persons by whom the infant has been maintained since the testator's death, the sums paid on account thereof, and what allowance is proper to be made for the time past and to come, the Master to make a separate report.

The widow having elected to take under the settlement, declared to be barred of her dower;

A proper release to be executed by her, the costs thereof to be paid out of the personal estate.

The defendant F. C. a trustee declared to be entitled to certain leasehold premises.

The Master directed to settle an allowance to be made to the defendant F. C. for his trouble in the execution of the trusts for the time past, and to inquire whether it will be for the benefit of the estate that he should be continued a trustee and receive compensation, and if proper, the Master to settle an

doth order that the said defendant do execute a proper and sufficient release of such claims, such release to be settled by the said Master; And it is ordered that all the costs charges and expenses attending the making and executing thereof be paid and discharged by the said plaintiff out of the personal estate and effects of the said testator &c.; And his Lordship doth declare that the said defendant Faithful Croft is entitled to the leasehold house and premises in Chancery Lane given and bequeathed to him in and by the codicil of the said testator bearing date the 20th day of January 1816, for the remainder of the term of years now to come therein, from the death of the said testator, for his own use and benefit; And it being alleged by the said plaintiffs the trustees that the nature and circumstances of the estate of the said testator require the application of a great proportion of time by and on the part of the said trustees for the due execution of the trusts of his said will in regard to his estate, and that they cannot undertake to continue the execution of the trusts without the aid and assistance of the said Faithful Croft as a co-trustee, he having during the life of the said testator had the principal and confidential management thereof, and being better acquainted therewith than any other person, and therefore it will be for the benefit of the said testator's estate that he should continue to be a trustee thereof, and the said Faithful Croft alleging that due attention to the affairs and concerns of the said testator will require so much of his time and attention as will be greatly prejudicial to his other pursuits and concerns in business, and therefore that he would not have undertaken to act therein but under the assurance that an application would be made to this court to authorize the allowance and payment of a reasonable compensation out of the said testator's estate for such his labour and time, and that he cannot continue to act therein without such reasonable allowance being made to him; It is ordered that it be referred to the Master to settle a reasonable allowance to be made to the said Faithful Croft out of the said testator's estate for his time pains and trouble in the execution of the said trusts for the time past; and in settling such allowance the said Master is to have regard to the legacy of £200 given and bequeathed to the said Faithful Croft by the said will of the said testator on the execution of the trusts thereby reposed in him; And it is ordered that the said Master do inquire whether it will be for the benefit of the said testator's estate that the said Faithful Croft should continue to be a trustee under the said will and to receive a compensation for the future employment of his time and trouble; and in case the said Master shall be of opinion that it



will be for the benefit of the said testator's estate that the said Faithful Croft should be continued a trustee, then the said Master is to settle a reasonable allowance to be made to the said Faithful Croft therein, and the said Master is to be at liberty to make a separate report &c.; And it is ordered that the said Master do tax all parties their costs &c.; And it is ordered that the same when taxed be paid to them by the said plaintiffs as executors out of the personal estate and effects of the said testator &c. Reg. Lib. B. 1819, fol. 777, 780.

allowance to be made to him, and the Master to make a separate report.

The costs of all parties to be taxed and paid out of the personal estate.

*XXXVIII. Decree establishing a will of real estate, and directing an account to be taken of the testator's debts, funeral expenses, and legacies, with directions in case the personal estate should be deficient, for raising the deficiency by mortgage or sale of the real estate.*

Declare that the will of the said testator being admitted by the said defendant P. H. his heir at law, ought to be established and the trusts thereof performed, and doth order and decree the same accordingly; And that it be referred to Mr. — one &c. to take an account of the said testator's debts funeral expenses and pecuniary legacies, and to compute interest on such of his debts as carry interest, as also to compute interest on his said legacies at the rate of £4 per cent. per annum from the time the same ought to have been paid according to the said testator's will; And the said Master is to cause an advertisement to be published in the London Gazette for the testator's creditors and pecuniary legatees to come in before him and prove their respective debts and claim their respective legacies within a time to be therein limited, or in default thereof they will be excluded the benefit of this decree; And the said Master is also to take an account of the personal estate of the said testator not specifically bequeathed come to the hands of the said defendant J. H. his surviving executor and the defendant P. H. or either of them, or any other person or persons for their or either of their use or by their or either of their order; And the said personal estate of testator is to be applied in payment of his debts funeral expenses and legacies in a due course of administration; And if there shall be any surplus of testator's per-

The will being admitted, decreed to be established and the trusts thereof to be performed;

An account to be taken of the testator's debts and legacies; the Master to compute interest on such as carried interest;

Advertisements to be published for the creditors and legatees to come in before the Master;

An account to be taken of the personal estate not specifically bequeathed, possessed by the defendants, the same to be applied in a due course of administration,

And the surplus to be divided according to the testator's will;

In case the personal estate should be insufficient to pay the debts &c. the rents of the real estate to be applied in keeping down the interest of the debts and legacies, and the deficiency of the personal estate to be raised by mortgage or sale of the real estate;

the interest of any mortgage to be kept down by the devisee during his life; the costs of all parties to be paid out of the testator's estate.

sonal estate remaining after payment of said testator's debts funeral expenses and pecuniary legacies, it is ordered and decreed that the same be equally divided between and paid or retained by the said defendant P. H. and the defendants Lord Viscount W. and S. his wife in right of the said S., and the defendant A. H. according to the said testator's will; But in case the said testator's personal estate shall not be sufficient to pay the said testator's debts and funeral expenses and pecuniary legacies, then it is ordered and decreed that the said defendant P. H. do out of the rents and profits of the said testator's real estates which have accrued since his death and been received and taken by him, keep down the interest of such of the said testator's debts and legacies as carry interest; And that so much of the principal of the said testator's debts and pecuniary legacies as his personal estate shall be deficient to pay and satisfy, be raised by mortgage or sale of a sufficient part of the said testator's real estate as the said Master shall direct, and that a sufficient part thereof be for that purpose mortgaged or sold with the approbation of the said Master, wherein all proper parties are to join, and all deeds and writings relating thereto in the custody or power of any of the parties are to be by them produced upon oath before the said Master as the said Master shall direct; And the money arising by such mortgage or sale is to be applied in the first place in payment and satisfaction of so much of the principal of the said debts as the said testator's personal estate shall fall short to satisfy, and then in payment of so much of the principal of the said pecuniary legacies as the said personal estate shall fall short to satisfy, and if the same shall be raised by mortgage of the said estate, then the said defendant P. H. is to keep down the interest thereof during his life; And it is further ordered that all the parties have their costs of this suit out of the said testator's estate to be taxed by the said Master.

**XXXIX.** *Decree for an account of a testator's personal estate, and directing the appointment of a receiver.*

Decree that it be referred to Mr. — one &c. to take an account of what leasehold estates the testator was entitled to at the time of his death, and of the annual value thereof, and also an account of the rents and profits thereof accrued since the testator's death received by the defendants his executors or either of them or by any person or persons by their or either of their order or for their or either of their use; And it is ordered that the said Master do also take an account of the personal estate of the said testator not specifically bequeathed possessed or received by the defendants his executors or either of them, or by any person or persons by their or either of their order or for their or either of their use; And it is ordered that the Master do also inquire and state to the court what is the value of the leasehold house at &c. lately belonging to the testator and taken by the defendant; And it is ordered that the said Master do also inquire and state to the court whether the defendants have possessed any and what specific articles bequeathed by the testator other than and except those which they have delivered to the specific legatees thereof; And for the better taking the said accounts and discovery of the matters aforesaid the parties are to be examined upon interrogatories and to produce all deeds &c.; the Master to make just allowances &c.

And it is ordered that the Master do appoint a proper person to be receiver of the rents and profits of the leasehold estates in question in this cause, and allow him a reasonable salary for his care and pains therein; such person so to be appointed receiver first giving security to be allowed of by the said Master, and taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for what he shall receive of such rents and profits as the court shall direct; and the tenants of the said estates are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion; And it is ordered that the person so to be appointed receiver do from time to time pass his accounts before the Master and pay the balances that shall be reported to be in his hands into the bank to be there placed to the credit of this cause, subject to the further order of this court; And reserve further consideration &c.

An account to be taken of the testator's leasehold estates and the rents thereof received by the defendants his executors;

Also an account of the personal estate not specifically bequeathed possessed by the defendants;

The Master to ascertain the value of a house taken by a defendant;

An inquiry directed as to what specific articles the defendants have possessed besides those delivered over;

The Master to appoint a receiver at a salary;

The receiver to be at liberty to let the estates with the approbation of the Master, and to pay all balances into the bank subject to further order.

*XL. Decree on further directions, directing the Master to compute subsequent interest on such debts as carried interest, and to take an account of any other debts remaining unpaid, also directing the sale of a sum of stock and payment thereof and out of other monies of the debts to be reported due to the creditors, except the plaintiff, he consenting to waive his right; the executor directed to pay the balance in his hands into court, and directions given as to applying the proceeds in the hands of a consignee of a West India estate.*

The Master to compute subsequent interest on such debts as carried interest, and to take an account of any other debts remaining unpaid; A sum of stock to be sold and thereof and out of certain sums of cash the creditors to be paid the sums reported due to them excepting the plaintiff W. H.;

His Honor did order that it should be referred back to the said Master to compute subsequent interest on such of the debts of the testator W. M. B. mentioned in the first schedule to his general report dated — whereon interest is thereby computed, and also to take an account of any other debts due from the said testator at his death remaining unpaid and not mentioned in the said first schedule to the said report; And it was further ordered that the sum of £—— bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in the said cause, “The account of the said testator’s real estate,” should be sold with the privity of the said Accountant-General, and the money arising by such sale paid into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, the like account; and that out of such money and out of the interest of the said bank annuities until such sale, and also out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s real estate,” and likewise out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s personal estate,” the several creditors of the said testator or their legal personal representatives should be paid what should be reported due to them except the said complainant W. H., he by his counsel consenting to waive his right or claim to receive any part of his debt out of the said bank annuities and cash; And it was further ordered that the said J. F. B. should pay into the bank the sum of £—— reported due from him by the said Master’s general report dated &c. on account of the personal estate of the said testator with the privity of the said Accountant-General to be there placed to the credit of the said cause, “The account of the testator’s personal estate;” And it was further ordered that C. S. the consignee of the rents profits and produce of the testator’s estate in the said island of St. C. should be continued and pass his accounts before the said Master; and that the said C. S. should out of the profits and produce of the

The executor directed to pay into the bank a sum reported due from him;

The consignee of a West India estate to be continued, and out of the produce in his hands to pay

said testator's estate which might come to his hands pay the arrears and growing interest of the debt reported due to the said W. H. and of the legacies given by the said testator's will and codicil, and also the arrears and growing payments of the annuities thereby given, and that he should pay the residue of such rents profits and produce into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, subject to the further order of the court; And it was further ordered that the said Master should tax all parties their costs of this suit other than the mortgagees who had been paid their costs, and that such costs when taxed should be paid to the solicitors for the said several parties out of the residue of the money to arise by sale of the said bank annuities before directed to be sold, and of the dividends that should accrue thereon until the sale thereof, and of the said sums of £— and £— cash in the bank in the said cause, the aforesaid accounts, (after payment of the said several creditors) and also out of the said sum of £— before directed to be paid into the bank on the account of the personal estate, as far as the same would extend, and that the residue of such costs should be paid by the said C. S. out of the rents profits and produce of the said testator's estate in the said island of St. C. [and the usual directions were thereby given for the said Accountant-General to draw on the bank for the purposes aforesaid;] And his Honor did continue the reservation of any directions as to the question whether there were any and what circumstances affecting the said testator's estate to make it proper any ways and how far to lessen the two legacies of £— each given by the said testator's will to his two daughters the said E. B. and L. B., and also the annuities of £— sterling given by the said will to the said D. M. G., £— St. C.'s currency thereby given to the said L. F., and also the two annuities of £— each given by the first codicil to the testator's will to the said E. B. and L. B.; And his Honor did reserve the consideration of any question that might arise between the creditors of the said testator respecting the jewels and ornaments of the person of the said testator's wife which she usually wore, and of all further directions; and any of the parties were to be at liberty to apply to the court as there should be occasion.

the arrears and growing interest of the debt due to W. H., and of the legacies, and also the arrears and growing payments of the annuities, and the residue to be paid into the bank;  
 Directions given as to taxing costs and out of what funds to be paid;

Further directions reserved as to the questions in what proportion certain legacies and annuities should abate,

the question respecting the widow's paraphernalia reserved, and all further directions.

XLI. Order directing a reference to the Master to inquire as to what part of a testator's personal estate is out on securities, which of them are proper to be continued or called in, with directions given for the latter purpose.

Let the Master inquire what part of the said testator's estate is standing out upon securities and what debts are owing to the said estate, and whether any and which of them are proper to be called in or continued, and let such of them as the Master shall find are proper to be continued be continued accordingly, and let such of them as the Master shall find are proper to be called in be called in with the approbation of the said Master, and let the Master appoint a proper person for that purpose, and make him a reasonable allowance in respect thereof; and if it shall be necessary to put any of them in suit, let the same be put in suit accordingly in the name of the defendant E. C. the executrix, and let her be indemnified therein out of the said testator's estate.

*[Faint, illegible text, likely bleed-through from the reverse side of the page.]*

\*XLII. Decree on further directions in the original cause, and on the hearing of a supplemental suit; the plaintiffs in the latter suit declared to be entitled to the benefit of the proceedings in the original cause, and to prosecute the same; the accounts directed to be carried on from the foot of the former accounts, and the executor to be charged with a legacy retained by him and allowed in the Master's general report; the testator's real estates declared to be subject to the payment of his simple-contract debts, and the plaintiffs in the second suit declared to be creditors to the amount of a sum of stock sold out by the testator, and an account directed to be taken of the dividends which would have accrued due in case the same had not been sold out; construction of the will declared with regard to a devise of certain estates not exceeding £3000 a-year, as being to the separate use of a married woman for life (she having for some years been separated from her husband), with remainder to her children in fee; the testator's shares in a theatre directed to be sold and the purchase-monies paid into the bank. The costs of all parties to be taxed as between solicitor and client, and directions given out of what funds the same were to be paid.

The prayer of the original bill, the decree made at the original hearing, the Master's general report, and the prayer of the supplemental bill recited.

Thursday the 15th day of March, in the 8th  
year of &c. 1827.

Between G. Gooch, - - - - Plaintiff,  
and

J. Haworth and S. his wife, &c.  
Defendants.

And between L. M. Mestaer &c. infants,  
all out of the jurisdiction of this court, at  
the Cape of Good Hope, by their next  
friend, - - - - - Plaintiffs,

and

G. G., J. H. and S. his wife, &c.  
Defendants.

By original and supplemental bills.

The first-mentioned cause coming on on the 18th day of April 1820, to be heard and debated before the Right Honourable the

Prayer of the original bill to have the testator's will established and the trusts thereof carried into execution, and the rights of all parties ascertained;

Accounts taken of the real and personal estates and of debts, &c.

That the personal estate might be duly applied, and the clear residue ascertained and secured;

In case the personal estate should be insufficient, that the rents of the real estate might be applied in aid, and the deficiency supplied by sale of the real estate;

That the residue of the real estate and the surplus produce of any sales might be ascertained and secured;

That the plaintiff might be authorized to complete or to sell a ship on the stocks;

That a receiver might be appointed of the rents of the estates and of the outstanding personal estate;

Master of the Rolls, in the presence of counsel learned on both sides, the scope of the plaintiffs' bill appeared to be, that the will of the said testator P. E. M. might be established, and that the trusts thereof might be performed and carried into execution by and under the direction and decree of this court, and that the rights and interests of all the parties entitled and interested under the same might be ascertained and declared, and that an account might be taken of the said testator's freehold and copyhold estates devised by his will, and of the rents and profits thereof, and of the personal estate and effects of the said testator not specifically bequeathed, and of the said testator's funeral and testamentary expenses, and of his debts, and of the legacies and annuities given and bequeathed by his said will and codicil, and which accounts the plaintiff was ready and willing and thereby offered to come to in such manner as this court should direct, upon being indemnified and having all just allowances made to him in taking of such accounts, and that the said personal estate might be applied in payment of the said funeral and testamentary expenses debts legacies and annuities in a due course of administration, and that the clear residue (if any) might be ascertained and secured for the benefit of the persons who should be declared to be entitled thereto; and in case the said personal estate not specifically bequeathed should be found insufficient to pay the said funeral and testamentary expenses debts legacies and annuities, that the rents and profits of the said freehold and copyhold estates might be applied in aid of the said personal estate, and that the deficiency (if any) might be supplied by the sale or mortgage of the whole or a competent part of the said freehold and copyhold estates, subject to such mortgages or equitable liens as were then subsisting therein, and that all proper parties might join in such sales, and that the residue of such freehold and copyhold estates (if any) and the surplus produce of the sales of such part as should be sold might be ascertained, and might be conveyed to or secured for the benefit of such persons as should be declared by the court entitled thereto or interested therein; and that the plaintiff might be authorized and directed either to complete the ship on the stocks or to sell and dispose thereof in its then present condition; and that some proper person or persons might be appointed to collect and receive the rents and profits of the said testator's freehold copyhold and leasehold estates, and also to collect and get in the debts and outstanding personal estate of the said testator, and that such directions might be from time to time given for the better collecting in and administering the estate of the said testator as to this court



should seem fit; and that the said defendant S. H. might set forth a full true and just account of all the personal estate and effects of the said testator come to her possession or power, and in particular a full true and exact inventory of all the household goods furniture linen china plate jewels and effects in the possession of the said testator or in the said testator's dwelling-house or known at his decease, and that it might be referred to one of the Masters of this court to ascertain whether any and what part of the said household furniture and effects were the separate property of the said defendant; and that in the mean time the said defendant might be restrained by the injunction of this court from selling or disposing of the said household goods furniture linen china plate jewels and effects or any other part thereof, and from removing or permitting the same or any part thereof to be removed from the said testator's dwelling-house or houses, or from the place or places where the same then were; Whereupon and upon debate of the matter and hearing the will of P. E. M. dated the 2d day of June 1809, and the codicil thereto read, and what was alleged by the counsel on both sides, His Honor did order and decree that it should be referred to Mr. A. then one of the Masters of this court, to take an account of the testator's personal estate not specifically bequeathed come to the hands of the plaintiff the executor, or any person or persons by his order or for his use, and of such part of the personal estate as had been sold, and of the outstanding personal estate; and the said Master was to distinguish such part of the said personal estate as was specifically bequeathed; And it was ordered that the said Master should inquire whether any part of the personal estate specifically bequeathed had been sold by the plaintiff, and if any had been sold, It was ordered that the said Master should inquire and certify the amount of the produce thereof; And it was ordered that the said Master should also take an account of the said testator's debts funeral expenses legacies and annuities, and compute interest on his debts carrying interest after such rate of interest as they respectively carried, and on his legacies from the time and at the rate directed by his will; and where no time of payment or rate of interest was directed, then at the rate of £4 per cent. per annum from the end of one year after the death of the testator; And the said Master was to cause advertisements to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose, and such of them as should not come in to prove their debts by the time so to

That a defendant might set forth an account of the testator's effects possessed by her, and an inventory of all the effects in his possession at his decease, and that the Master may ascertain what part thereof was the defendant's separate property, and that in the mean time an injunction may issue to restrain her from selling or removing the same;

Decree made directing a reference to the Master to take an account of personal estate not specifically bequeathed possessed by plaintiff the executor, what part had been sold, and what was outstanding;

also to inquire what personal estate specifically bequeathed had been sold, and the produce thereof;

Account directed of the testator's debts, funeral expenses, legacies, and annuities, with directions as to computing interest on debts and legacies;

Advertisements to be published for the creditors to come in and prove;

directions given as to the application of personal estate not specifically bequeathed;

Inquiry directed what goods, furniture, &c. in the testator's possession at his decease belonged to defendant S. H.; Inquiry directed whether J. E. M. was the testator's heir at law, what other children the defendant had besides the plaintiff L. M. M. and as to their respective ages, whether any had died, and which of them had been born since the testator's death;

Inquiry directed as to a deed of separation executed by the defendants J. H. and S. H. and whether J. H. had notwithstanding any claim in his marital right to property and effects given by the testator to S. H.; The Receiver to be continued, and directions given to the Master in passing his accounts, to distinguish the freehold and leasehold accounts, and the accounts of the parts specifically devised; Inquiry directed as to what sums had been paid by the plaintiff or Receiver in repairs;

be limited were to be excluded the benefit of the said decree; And it was ordered that the said testator's personal estate not specifically bequeathed should be applied in payment of his funeral expenses and debts in a course of administration, and then in payment of his legacies and annuities; And it was ordered that the clear residue thereof should be ascertained; And it was ordered that the said Master should inquire and certify whether any part of the household goods furniture linen china plate jewels and effects in the possession of the said testator or in and about his dwelling-houses at his decease, belonged to the said defendant S. H.; And it was ordered that the said Master should inquire and certify whether the said defendant J. E. M. was the heir at law of the said testator, and whether there was or were any and what other child or children of the said defendant living at the decease of the said testator besides the said defendant L. M. M. the daughter of the said J. E. M.; And it was ordered that the said Master should inquire whether the said defendant L. M. M. or any of the said children had or hath attained the age of twenty-one years, and what age they had respectively attained, and whether any and which of them had died, and whether any and what child or children had been born to the said defendant J. E. M. since the decease of the said testator; And it was ordered that the said Master should inquire whether any and what deed or instrument was entered into and executed on the occasion of the separation of the said defendant J. H. from the said defendant S. H., and whether notwithstanding such deed or instrument the said defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in his the said defendant's marital right or otherwise; And it was ordered that the receiver of the rents and profits of the real and leasehold estates, and of the outstanding personal estate should be continued, and pass his accounts before the said Master; And it was ordered that the said Master in passing the said Receiver's accounts should distinguish the accounts of the freehold from the accounts of the leaseholds, and distinguish the accounts of such part of the said testator's real and leasehold estates as was specifically devised by his will; And it was ordered that the said Master should inquire whether any and what sum of money had been paid by the said plaintiff and the said Receiver or either of them in the reparation of or relating to the said estate specifically devised; And the said Master was to be at liberty to make a separate report or reports of any or either of the matters aforesaid as he should think

proper, and for the better taking the several accounts and discovery of the matters aforesaid, the parties were to produce before the said Master upon oath all papers and writings in their custody or power relating to the matters aforesaid, and were to be examined upon interrogatories as the said Master should direct, who in taking of the said accounts was to make unto the parties all just allowances; And it was ordered that the said Master should tax the costs of the said suit of all the parties to that time, the costs of the plaintiff to be taxed as between solicitor and client; And it was ordered that the said Master should inquire whether any and what costs charges and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said testator's will, or otherwise relating to the said testator's affairs; And his Honor did reserve the payment thereof, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master should have made his general report; And the parties were to be at liberty to exhibit an interrogatory in the Master's office and examine witnesses thereon to prove the will of the testator as to his real estate; And any of the parties were to be at liberty to apply to this court as there should be occasion; That in pursuance of the said decree the said Master made his report dated the 6th day of December 1824 which stands absolutely confirmed, and thereby certified that he found that all the creditors of the said testator named in the several reports therein before mentioned had subsequently been paid the several sums reported due to them out of a sum of £9115 in manner directed by an order of the 30th day of July 1822, but a claim had been laid before him on behalf of the defendant J. E. M. and his children, the plaintiffs in the second mentioned cause, being the claim hereinafter mentioned, in respect of the trust funds sold out by the said testator as hereinafter stated; And the said Master after stating the will and codicil of P. M. the father of the defendant J. E. M. and of the said testator P. E. M., certified that it appears that the said P. M. died in January 1791, being at the time of his decease possessed of £100 per annum consolidated long annuities standing in the books of the governor and company of the bank of England in his own name; And that the will was proved by the said P. E. M. and J. M. in the Prerogative Court of Canterbury on the 5th day of February 1791, and that the said J. M. died leaving the said testator P. E. M. him surviving, and that the said testator P. E. M. received the dividends which became due on the said long annuities up to the 10th day of October 1801, and afterwards departed this

by the plaintiff and Receiver in repairs of an estate specifically devised; the Master to be at liberty to make separate reports, and in taking the accounts to make all just allowances; the costs of all parties to be taxed, those of the plaintiff as between solicitor and client; inquiry directed as to what costs had been incurred by the plaintiff in the execution of the trusts of the will;

the parties to be at liberty to examine witnesses in the Master's Office to prove the will.

Statement of the Master's report, certifying that all the creditors had been paid, and out of what fund, but that a claim had been laid before him on behalf of defendant J. E. M. and his children in respect of certain trust funds sold out by the testator;

and certifying that P. M. died possessed of £100 long annuities,

that his will was proved by P. E. M. and J. M., that P. E. M. survived and received the dividends on the long annuities up to 1801,

that he died in 1819,

and that under the 56 Geo. 3. the £100 long annuities were transferred to the account of the commissioners for the reduction of the national debt, together with the dividends accrued due thereon, amounting to £2150;

Order made directing an inquiry as to what bank long annuities standing in the name of P. M. were transferred to the said commissioners, and what was due thereon, and who were beneficially entitled thereto;

Statement of the Master's report, certifying his opinion that the £100 long annuities passed under the will of P. M. to P. E. M. as his residuary legatee, and that the same, together with the £2150, the amount of dividends accrued due, formed part of the outstanding personal estate of P. E. M.,

life on the 6th day of February 1819, having by his will appointed the said plaintiffs G. G. and R. P. and W. L. his executors, and that in pursuance of an act of parliament passed in the 56th year of the reign of his late Majesty King George the Third, intituled, "An act to authorize the transferring stock upon which dividends shall remain unclaimed for the space of at least ten years at the bank of England, and also all lottery prizes or benefits or balances or sums issued for paying the principal of stocks or annuities which shall not have been demanded for the same period, to the commissioners for the reduction of the national debt," the said £100 per annum consolidated long annuities were transferred out of the name of the said P. M. or otherwise in pursuance of the said act appropriated to the account of the commissioners for the reduction of the national debt, together with the amount of the dividends which accrued due thereon from the said 10th day of October 1801 inclusive, and that there became due for dividends on the said annuities up to and inclusively of the 5th day of April 1823 the sum of £2150, being for forty-three half-yearly dividends thereon; and that by an order made in the matter of the said act of parliament on the 29th day of November 1822, It was referred to Mr. J. lately one of the Masters of this honorable court, to inquire and state to the court what Bank long annuities which were standing in the name of the said P. M. in the books of the Governor and Company of the Bank of England had been transferred into the names of the commissioners for the reduction of the national debt under and by virtue of the said act of parliament, and what was due and unreceived for dividends in respect of the said Bank long annuities; And also to inquire and state to the court who was or were beneficially entitled to the said Bank long annuities and the interest due and unreceived thereon, and in what shares and proportions; And that in pursuance of the said order Mr. T. the successor of the said Master J. made his report bearing date the — day of — 1823, and thereby certified that he was of opinion that the said £100 per annum consolidated long annuities standing in the name of the said P. M. which had been transferred into the name of the commissioners for the reduction of the national debt by virtue of the said act of parliament, belonged to the said P. M. deceased, and that the same passed under the will of the said P. M. to the said testator P. E. M. as his residuary legatee, and that the same, together with the sum of £2150, being the amount of forty-three half-yearly dividends upon the said long annuities from the 5th day of April 1802 to the said 5th day of April last inclusive, then formed part of the outstanding personal estate of the said

testator P. E. M., and that he was further of opinion that the said G. G. as executor of the said P. E. M. deceased was beneficially entitled to the said consolidated long annuities, and that the same ought to be transferred by the said G. G. into the name of the Accountant-General of this court, in trust in this cause, and that the sum of £2150 accrued for dividends thereon ought to be paid to the said C. T. the person appointed to collect and get in the outstanding personal estate of the said testator P. E. M., to be disposed of by him under the order and direction of this court; And the said Master W. by his said report of the — day of — 1824 found that by an order dated the — day of — 1823 It was ordered that the report of the said Master T. should be absolutely confirmed; And it was further ordered that the secretary or deputy secretary of the Governor and Company of the Bank of England should transfer unto the Accountant-General of this court in trust in this cause, the said sum of £100 per annum consolidated long annuities theretofore standing in the name of the said P. M. and since transferred into the names of the commissioners for the reduction of the national debt; And it was further ordered that the said sum of £2150 being the amount of the dividends accrued upon the said consolidated long annuities up to and inclusive of the 5th day of April 1823 should be paid unto the said receiver C. T. ; And it was referred to the said Master T. to tax and settle the costs incurred by the said commissioners for the reduction of the national debt, and also by his Majesty's Attorney-General and by the said plaintiff G. G. in the said matter, and that the said costs when taxed should be paid by the said C. T. out of the said sum of £2150, and that the residue of the said sum of £2150 should be applied and disposed of by the said C. T. as such receiver as aforesaid under the direction of this honorable court; And he found that the said £100 per annum consolidated long annuities were transferred into the name of the Accountant-General of this court in trust in this cause on the — day of — 1823, and that the said long annuities were then standing in the name of the said Accountant-General in trust in this cause; And he further found that the said C. T. as such receiver as aforesaid on the 14th day of August 1823 received the sum of £2025, being the said sum of £2150 dividends accrued due on the said consolidated long annuities up to and inclusive of the dividends due on the 5th day of April last [*after allowing thereout for property-tax and costs* ], and which said sum of £2025 was included in the said C. T.'s fifth account as receiver of the outstanding personal estate of the said testator; And he further certified that under the circumstances aforesaid he had at the re-

and that G. G. his executor was beneficially entitled to the long annuities, that the same ought to be transferred into the Accountant-General's name, and that the £2150 ought to be paid to the receiver.

Statement of an order confirming the last stated report, and directing a transfer to be made to the Accountant-General of the £100 long annuities, and payment of the £2150 to the receiver, also directing a reference for taxation of costs and payment thereof out of the £2150 ;

And further certifying that the £100 long annuities were transferred into the name of the Accountant-General, and that the receiver had received the balance of the £2150, after deducting the property tax and costs ;

And further certifying that a statement on the part of the plaintiff G. G. had been laid before him, whereby it appeared that G. E. filed a bill of foreclosure against the testator, setting forth a bond, and indentures of lease and release and mortgage executed by him for securing £5000 and interest on an estate at R.,

and praying the usual account of principal and interest due, and for a foreclosure in default of payment;

That the testator filed a cross-bill praying for redemption, and to have an account taken of principal and interest secured by the mortgage, and of all sums paid by the testator on account;

That after the testator's death the mortgagee filed a bill of

quest of the solicitor for the said defendant J. E. M. thought fit to state those circumstances for the judgment of the court; And he further certified that a statement on the part of the said plaintiff G. G. had been laid before him, whereby it appeared that on or about the 10th day of January 1817 G. E. since deceased filed his bill in this court against the said testator, setting forth the bond of the said testator bearing date the 1st day of March 1805 whereby the said testator became bound unto the said G. E. in the penal sum of £10,000 with a condition for making the same void on payment of £5000 and interest at the times thereafter mentioned, and also setting forth certain indentures of lease and release dated respectively the 28th day of February and the 1st day of March 1805, and made between the said testator of the one part and the said G. E. of the other part, by which indenture of release in consideration of £5000 therein expressed to be paid to the said testator by the said G. E., he the said testator did convey a certain dock yard and several messuages tenements or dwelling-houses situate at R. in the county of S. part of the real estate of the said testator, and comprising the whole of his R. estate unto and to the use of the said G. E. his heirs and assigns for ever, subject to redemption on payment by the said testator to the said G. E. of the said sum of £5000 with interest at £5 per cent. per annum on the 1st day of March 1806, and praying that an account might be taken by one of the Masters of this court of what was due to the said G. E. for principal and interest on his said security, and that the said testator might be decreed to pay to the said G. E. what should be so found due, and in default thereof that the said testator might be foreclosed from all equity of redemption in the same premises; And that the said testator filed a cross-bill against the said G. E., and thereby prayed that he the said testator might be let in to redeem the said mortgaged premises, and that an account might be taken of the principal and interest secured by the said mortgage, and of all sums paid or advanced by the said testator to or for the use of the said G. E. on account of the said mortgage; And in case it should appear that the said G. E. had been overpaid the amount of what was due to him in respect of his said mortgage, then that he might be decreed to repay to the said testator so much money as it should be found he had been overpaid, and that the said G. E. might be decreed to re-convey to the said testator and to deliver up the said indentures of lease and release and bond together with six several bills of exchange in the said cross-bill mentioned; And that after the death of the said testator the said G. E. filed his bill of revivor against the plaintiff G. G., and that afterwards the said

G. E. died having appointed A. H. C. and W. H. executors of his will, and that since the death of the said G. E. his said executors had filed their bill of revivor and supplement against the said plaintiff G. G. and J. R. of &c. esquire, who under and by virtue of certain indentures of lease and release bearing date the 27th and 28th days of November 1818, made between the said testator of the one part and the said J. R. of the other part was a mortgagee of the same premises for the sum of £8000 and interest at £5 per cent. per annum; And the said Master further found that the said G. G. put in his answer to the said last-mentioned bill, and that the said suits and proceedings were then pending, but the sum of £3000 had been paid to the said J. R. under an order made in this cause on the — day of — 1824 out of the outstanding personal estate of the said testator in part discharge of the said principal sum of £8000, and that the said interest on the remaining principal sum of £5000 had been paid up to the 28th day of November 1824 out of the rents and profits of the said testator's real estate; And as to the directions in the said decree that his predecessor should take an account of the said testator's legacies and annuities and compute interest on his legacies from the time and at the rate directed by his will, and where no time of payment or rate of interest was directed then at the rate of £4 per cent. per annum from the end of one year after the death of the said testator, the said Master W. by his report found that the plaintiff G. G. had retained his said legacy of £500 out of the personal estate of the said testator, and that he had been allowed the same in his accounts of the said testator's personal estate come to his hands; And as to the bequests given by the said testator's will, he found that the sum of £4636 was then due to the defendant J. E. M. for arrears of the aforesaid annuity of £800 given to him for his life, such arrears being computed from the — day of — 1819 the day of the death of the said testator unto the — day of — 1824 being the date of his said report; and that the sum of £466 was due to the defendant F. M. P. late F. M. M. but then the wife of the defendant J. P. for arrears of interest of the aforesaid sum of £2000 bequeathed in manner aforesaid, such arrears being computed for the same period and at the rate of £4 per cent. per annum; and that the like sum of £446 was due to the defendant E. E. M. A. widow, late E. E. M. M. for arrears of interest bequeathed as aforesaid in respect of the aforesaid sum of £2000, such arrears being also computed for the period and at the rate aforesaid; and that the several sums aforesaid particularly set forth in the last schedule to his said report and amounting together to the sum of £620 then remained due to the

revivor, and died having appointed A. H. C. and W. H. executors, who filed a bill of revivor and supplement against the plaintiff G. G. and J. R. a subsequent mortgagee;

That the proceedings were then pending, but that £3000 had been paid to J. R. under an order in part discharge of the principal due to him;

And further certifying that G. G. had retained his legacy of £500;

And also certifying what was due to J. E. M. for arrears of his annuity,

and also what was due to F. M. P. wife of defendant J. P. for arrears of interest on her legacy,

and also what was due to defendant E. E. M. A. for arrears of interest on her legacy,

and also what was due to the other legatees for their legacies and inter-

rest thereon as specified in his report ;

As to the bequest of £3000 per annum to S. H. for life, the Master declined to proceed to take an account until the rights of all parties interested therein were ascertained ;

As to the direction with regard to what household goods, &c. in the possession of the testator belonged to S. H., the Master certified that by a former order G. G. was directed to deliver to her the keys of certain iron chests containing jewels and plate she signing an inventory thereof, and that the same was done ;

And as to other part of the effects he certified that by a former report it appeared that the plaintiff had sold certain houses and cows and received the monies produced thereby with which he had been charged ;

Also certifying of what the clear residue of the personal estate consisted ;

several other legatees in the testator's will and in the first schedule named, for the principal of their respective legacies, and for interest thereon computed at £4 per cent. per annum from the 7th day of February 1820 (being one year after the death of the testator) unto the 5th day of December 1824 ; And as to the aforesaid bequest of £3000 per annum to the defendant S. H. for her life, and after her decease for the benefit of the children of the defendant J. E. M., he had not proceeded to take any account thereof, being of opinion that no such account could be taken until this court should have declared the right and interests of the defendant S. H. under and by virtue of the testator's will ; And as to the direction in the said decree that his predecessors should inquire whether any part of the household goods furniture linen china plate jewels and effects in the possession of the testator or in or about his dwelling-house at his decease belonged to S. H., he found that by an order dated the — day of — 1820 on the application of the said defendant S. H., It was ordered that the plaintiff should be at liberty to deliver to the said defendant S. H. the keys of the iron chests in the petition mentioned containing the jewels and plate, and that she should sign an inventory of such jewels and plate and a receipt for the same ; And he found that in pursuance of the said order the said keys were delivered to the said defendant S. H. on the — day of — 1820, and that she signed an inventory and receipt for the same which was then in the hands of the said plaintiff ; And as to the other part of the effects in question, he found that by his predecessor's said separate report of the 19th day of June 1821 the said plaintiff had with the consent of the said defendant S. H. sold twelve houses and several cows specifically bequeathed to her for several sums of money amounting together to the said sum of £974 which was received by the plaintiff, and was included in the sum which his predecessor charged him in and by his said separate report ; And he found that the clear residue of the said testator's personal estate subject to the payment of the residue of the said mortgage debt of £8000 to the said J. R. and also to the said claim of the executors of the said G. E., and also subject to the claim of the said J. E. M. and his children in respect of the sale of the said £6666 bank 3 per cent. annuities, consist of the following particulars : in the name of the Accountant-General of this court in trust in this cause the sum of £100 per annum consolidated long annuities, and the sum of £100 cash arisen from interest thereon up to the — day of — 1824 inclusive, also the sum of £124 cash remaining in the bank on the credit of this cause being the balance of personal estate paid into court after payment thereof of the debts found due to the creditors



of the said testator as thereinbefore mentioned and of the costs of the said suit paid thereout as aforesaid, also of two Drury-Lane shares of small value, also of five River-Lea shares amounting to £500 which were deposited by the testator in the hands of R. W. of &c. as security for payment of a balance of £500 and upwards due to him from the said testator and still continue in his hands, also of the several outstanding debts remaining due to the said testator's estate, and an unliquidated claim made by the said receiver upon the Columbian Government amounting to £7000, but which claim hath not been admitted by the said Government, and doth also consist of a leasehold public-house situate at W. let at the yearly rent of £30, and which was held by the said testator by lease granted by I. Earl T. deceased to the said P. M. deceased the father of the said testator at a ground rent of £7. 10s. per annum, and which lease would expire at Lady-day 1833; And as to the direction in the said decree that his predecessor should inquire whether the said defendant J. E. M. was the heir at law of the said testator, he certified that having made the said inquiry he found that the said testator the said P. E. M. died a bachelor, leaving the said defendant J. E. M. his only brother and heir at law him surviving; And as to the inquiry respecting the children of the said defendant J. E. M. he found his predecessor had made the separate report hereinbefore mentioned bearing date the — day of — 1823; And as to the direction in the said decree that his predecessor should inquire whether any and what deed or instrument was entered into and executed on the occasion of the separation of the said defendant J. H. from the said defendant S. H., and whether notwithstanding such deed or instrument the said defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in the said defendant's marital right or otherwise, he found that by an affidavit of the said J. H. made in the said cause on the 25th day of July 1823 he made out that he had not then in his custody possession or power the deed of separation made between him the said defendant J. H. and the said defendant S. H., nor did he know in whose custody possession or power the same was; And the said Master certified that the said defendant S. H. by an affidavit made before him in the said cause on the 5th day of March 1824 made out that a deed was executed on the occasion of her separation from the said defendant J. H. in or about the month of April 1797; and that one part of such deed was delivered to her and remained with her until the month of September 1820 or thereabouts, when at the request of T. H. who then acted

Also certifying that J. E. M. was the only brother and heir at law of the testator;

And as to the direction in the decree with regard to the deed of separation, and what claim J. H. might have in the property bequeathed to S. H. by the testator, the Master certified that on account of the loss of the deed as appeared by affidavits set forth, he was unable to give any opinion how far the rights of the parties were affected;

as her solicitor in this cause she delivered the same to him for the purpose as he represented to her of laying the same before his the said Master's predecessor, and further that she had caused numerous applications to be made to the said T. H. for the said deed without being able to obtain the same, he the said T. H. stating that the said deed was lost, upon consideration of which several matters the said Master found that a deed was entered into and executed on the occasion of the said separation between the said defendant, but the same not having been produced to him and no evidence given as to the provisions of the said deed he was not able to give any opinion how far the rights of the said parties were affected thereby; And as to the direction that the said receiver of the rents and profits of the real and leasehold estates and of the outstanding personal estate should be continued and pass his accounts before his predecessor, and that in passing the said receiver's accounts he should distinguish the accounts of the freehold from the accounts of leasehold, and distinguish the accounts of such part of the said testator's real and leasehold estate as was specifically bequeathed by his will, he certified that the said receiver had passed his said accounts as to the said real estate up to Christmas 1823 as appears by his said report bearing date the — day of — 1824; and that under an order of the — day of — 1823, and his certificate bearing date the — day of — 1824 he paid the said balance of the said account amounting to the sum of £186 unto the said defendant S. H. on the said 4th day of June, and as to the said personal estate that he had passed his account up to the — day of — 1824 as appeared by his report bearing date the — day of — 1824, and had under an order bearing date the — day of — 1824 paid the balance of the said accounts to J. R. hereinbefore mentioned, and he certified that in passing the said accounts he distinguished the same in the manner directed by the said order; And as to the direction in the said decree that his predecessor should inquire whether any and what sums of money had been paid by the said plaintiff and the said receiver or either of them in the reparation or otherwise relating to the said estate specifically devised, he found that his predecessor had included the same in the separate report of the — day of — 1821 hereinbefore mentioned; and that his predecessor had taxed the costs of the said suit and of all parties to the time of making the said order, and made a separate report thereof which bore date the — day of — 1821, and that the said costs were paid under the said order of the — day of — 1821; And he further found that in pursuance of another order bearing the 30th day of July 1822 his predecessor taxed the subse-

And further certifying as to the receiver's accounts;

And further certifying that the costs of the suit had been taxed and paid;

quent costs of all the parties at the time of making the said order as between solicitor and client, and made a separate report thereof which bore date the 6th day of August 1823, and that the said costs had been since paid under an order bearing date the 25th day of July 1823; And as to the direction in the said decree that his predecessor should inquire whether any and what costs charges and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said will or otherwise relating to the said testator's affairs, he certified that having made the said inquiry he found that the said plaintiff had incurred certain costs in the said suit instituted by the said A. H. C. and W. H. as executors of the said G. E. against him the said plaintiff amounting to the sum of £38, and also certain costs amounting to £41 in defending an action brought by J. P. against the plaintiff as executor of the said testator to recover a debt which had previously been rejected by the said Master W.'s predecessor, and also certain other costs amounting to £70 in defending an action brought by J. L. against the said plaintiff as executor of the said testator to recover another debt which had previously also been rejected by his predecessor, and also certain charges amounting to £49 for various business relating to the said testator's estate transacted by the solicitors of the said plaintiff from August 1820 to March last past, and which said several costs charges and expenses amounted together to the sum of £200; and he found that the said plaintiff exclusive of the above costs and charges had also incurred costs in a suit instituted by or on behalf of E. J. A. widow against the said plaintiff as executor of the said testator, but which suit was dismissed, and the costs of the said plaintiff were ordered to be paid by the said E. J. A., but which have not yet been paid; And the said cause coming on on the 14th instant and on this present day to be heard for further directions and costs, in the presence of counsel learned on both sides, and the second mentioned cause coming on to be heard at the same time in the presence of counsel learned on both sides, The substance of the said bill, after stating the said decree and report in the said first mentioned cause, appeared to be, that P. E. M. being at the respective times of making his will and of his death, seised of divers freehold and copyhold estates, and being at the time of his death possessed of or entitled to considerable personal estate and effects, and being a trader within the true intent and meaning of the laws relating to bankrupts, did make and publish his will bearing date —, which was signed by him and attested in such manner as by law is required for passing freehold estates, and was in the words and figures or to the import

And further certifying as to the amount of costs incurred by the plaintiff in the execution of the trusts of the will, and in defending certain suits and actions;

Statement of the substance of the bill filed in the second mentioned cause,

and effect following: (The bill after stating the will, the particulars of the testator's property, and various petitions orders and reports, proceeded thus:) That in pursuance of the said order the said J. L. has been duly appointed receiver of the rents and profits of the freehold copyhold and leasehold estates, [in the place of C. T. the former receiver deceased] and S. M. S. has been duly appointed receiver of the outstanding personal estate and effects, and that the executors of the said C. T. the late receiver have duly passed his last accounts of the rents and profits and also of the personal estate and effects, and have paid the balance appearing due on account of the rents and profits to the said S. H. pursuant to the order of this court, and have paid the balance appearing due on account of the personal estate and effects with the privity of the Accountant-General to the credit of the said suit under the order of this court; That being entitled to a beneficial interest under the said will of the said testator P. E. M., the plaintiffs are, as they humbly submit, entitled to have the benefit of the said decree orders reports and proceedings in the said cause, and to have their rights and interests ascertained and secured by and under the direction and decree of this court; That the plaintiffs, are as they humbly submit, entitled to have the said trust fund or sum of £6666, 3 per cent. consolidated bank annuities which was appropriated by the said testator P. E. M. out of the assets of the said testator P. M. to answer the said annuity of £200 bequeathed by the said testator P. M. to the said P. E. M. and the plaintiffs, which was afterwards sold out by the said testator P. E. M. as aforesaid, raised and secured for the benefit of the plaintiffs; and that the said sum of £100 per annum long annuities part of the assets of the said P. M. which has been transferred into and now stands in the name of the Accountant-General in trust in this cause, and that the said sum of £2050 being the dividends thereof up to the 5th day of April 1823 received by the said C. T. the late receiver as aforesaid, and the subsequent dividends which have since accrued due thereon ought to be applied in the first place towards raising the said trust fund or sum of £6666 bank annuities, and that the deficiency ought to be raised out of the estate and effects of the said testator P. E. M.; And the plaintiffs charge that the said sum of £2050 having been applied towards payment of the said sum of £3000 to the said J. R. as aforesaid, the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgage estate for the sum of £2050 and the interest thereof, and the said defendant S. H. claims to be entitled by virtue of the said will of the said testator P. E. M. to some part of the said testator's real and personal estate

absolutely, or in all events to some interest greater than a life estate therein, and the plaintiffs charge and humbly submit that according to the true construction of the said will of the said testator P. E. M. the said defendant S. H. is entitled only for her life to the yearly rent or sum of £3000 by and out of the annual income of the real and personal estates of the said testator if such income shall be sufficient for that purpose, and that subject to such yearly rent or sum of £3000 or to so much thereof as shall be produced by the annual income of the said real and personal estate, the same belongs to the plaintiffs the children of the said J. E. M. in equal shares; Therefore that the defendants in the second mentioned cause might answer the matters aforesaid; And that they might have the benefit of the said suit decree decretal orders report and proceedings in such manner as this court shall direct, and might be at liberty to prosecute the same; And that the rights and interests of the plaintiffs under the will and codicil of the said testator P. E. M. might be ascertained and declared and secured for the benefit of the plaintiffs, subject to raising and paying of the said trust fund or sum of £6666. 3 per cent. consolidated bank annuities; And that it might be declared that the plaintiffs are entitled to have the said trust fund or sum of £6666. 3 per cent. bank annuities raised and secured for their benefit; And that the said sum of £100 per annum long annuities standing in the name of the said Accountant-General in trust in the said cause *Gooch v. Haworth*, and the said sum of £2050, the dividends thereof received by the said late receiver C. T., and the subsequent dividends of the said long annuities, ought to be applied towards raising the said sum of £6666 bank annuities, and that the deficiency ought to be raised out of the estate and effects of the said testator P. E. M., and that the said long annuities the sum of £2050 and subsequent dividends might be applied accordingly; And that the deficiency might be raised accordingly out of the real and personal estate and effects of the said P. E. M., and that for that purpose it might be declared that the said P. E. M. was at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts; And that it might be declared that the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgaged estate for the said sum of £2050 part of the said sum of £3000 paid to him as aforesaid and the interest thereof, and that the plaintiffs might have the benefit of the said mortgage security accordingly; And to be relieved is the scope of the plaintiffs' bill in the second mentioned cause; Whereto the counsel for the defendant S. H. alleged that &c. [*stating the substance of the answers of the*

Praying that the plaintiffs might have the benefit of the former proceedings, and be at liberty to prosecute the same, that the rights and interests of the plaintiffs might be ascertained and secured, and that they might be declared entitled to have a sum of £6666 stock raised, and that certain funds might be applied towards raising the same, and the deficiency raised out of the testator's real and personal estate;

that it might be declared that the testator was a trader liable to the bankrupt laws; and that the plaintiffs might be declared entitled to stand in the place of a mortgagee for part of a sum paid to him;

Decree.—The plaintiffs in the second cause entitled to the benefit of the proceedings in the original cause, and to prosecute the same as parties thereto. Directions to the Master to carry on the account of the testator's personal estate from the foot of his report; question reserved as to application of specific legacies to payment of debts; the Master directed to carry on the executor's account from the foot of the last account, and charge him with a legacy retained by him; Testator's will declared to be well proved, and his real estates liable to the payment of simple-contract debts, and the plaintiffs in the second cause to be considered as creditors to the amount of £6666 stock; an account to be taken of what is due to the mortgage. Estates not exceeding £5000 per annum declared to be well devised to S. H. for life, with remainder to her children in fee, and not subject to legacies; an account to be taken of what is due to the testator's estate under a certain deed; also an account of the dividends

*several defendants;*] Whereupon and upon debate of the matter and hearing the decree dated the 18th day of April 1820, the report dated the 6th day of December 1824, an exhibit marked (A), being the will of P. E. M., the codicil thereto, and the proofs taken in these causes read, and what was alleged by the counsel on both sides, THIS COURT DOETH DECREE that the plaintiffs in the cause of *Mestaer v. Gooch* are entitled to the benefit of the proceedings in the original cause *Gooch v. Haworth*, and doth order that they be at liberty to prosecute the same as parties thereto; And it is ordered that it be referred back to the Master to carry on the account of the testator's personal estate from the foot of his report dated the 6th day of December 1824; And this court doth reserve any question as to the application of the specific legacies given by the will of the testator P. E. M. to the payment of the said testator's debts; And it is ordered that the said Master do carry on the account of the defendant G. G. from the foot of his last account, and therein charge him with the sum of £500 allowed to him in the schedule to the said Master's report dated the 19th day of June 1821, on account of his legacy under the said testator's will; And this court doth declare the will of the testator P. E. M. well proved, and doth declare that the said testator having been a trader at the time of his death, his freehold estates are liable to the payment of his simple-contract debts in case of a deficiency of his personal estate, and that J. E. M. and L. M. M., and P. M. J. E. M. and M. M. infants, his children, are to be considered as creditors on the estate of the said P. E. M. to the amount of £6666 bank annuities; And it is ordered that the said Master do take an account of what is due under or by virtue of the indenture of mortgage made to J. R. in the Master's report mentioned; And this court doth declare that the testator's copyhold estate at — and all the freehold and copyhold estate of the said testator not exceeding £3000 per annum, are well devised to the defendant S. H. for her life for her separate use, with remainder to the children of the defendant J. E. M. as tenants in common in fee, and are not subject to the legacies given by the said testator's will; And it is ordered that the said Master do take an account of what is now due to the estate of the said testator P. E. M. under the indenture of the 31st day of December 1796 in the pleadings of this cause mentioned; And it is ordered that the said Master do take an account of the dividends which would have accrued due in respect of the £6666 bank 3 per cent. annuities, in case the same had not been sold out; And it is ordered that the said testator's shares in the Theatre Royal Drury Lane be sold by

some proper person to be approved of by the said Master to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the Master shall direct; and in order to such sale, It is ordered that all deeds and writings in the custody or power of any of the parties be produced before the Master upon oath; And it is ordered that the monies to arise by such sale, the amount thereof to be verified by affidavit, be paid into the bank with the privity of the Accountant-General of this court to the credit of the said cause, *Gooch v. Haworth*, subject to the further order of the court; And it is ordered that the receiver of the rents appointed in the cause of *Gooch v. Haworth* of the said testator's freehold copyhold and leasehold estates be continued and pass his accounts before the Master, and pay the balances to be reported due from him according to the order of the 28th day of May 1823; And it is ordered that the person appointed to collect and get in the said testator's personal estate be continued and pass his accounts, and pay the balance to be reported due from him into the bank with the privity of the said Accountant-General to the credit of the cause, *Gooch v. Haworth*, subject to the further order of the court; And it is ordered that the said Master do tax the costs of these suits of all parties to this time as between solicitor and client; And it is ordered that the said Master be at liberty to make a separate report thereof, and also separate reports of any other of the matters hereby referred to him as he shall think fit; And it is ordered that such costs when taxed, and also the sum of £200, the amount of the costs charges and expenses found by the said Master's report of the 6th day of December 1824 to have been incurred by the plaintiff G. G., be paid out of the said sum of £150 part of the sum of £358 cash, on the credit of the cause *Gooch v. Haworth*, and out of any other cash which may remain on the credit of the same cause; and in case such cash shall not be sufficient, It is ordered that so much of the £3805 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in the same cause, as will with the said sum of £150 cash raise the amount of such costs when taxed and the said sum of £200, be sold with the privity of the said Accountant-General, and one of the cashiers of the bank is to have notice and receive the money to arise by such sale, who upon receipt thereof is to pay the same into the bank with the privity of the said Accountant-General, to be there placed to the credit of the said cause; and out of the money to arise by such sale and such cash, It is ordered that such costs when taxed, and also the said sum of £200 the

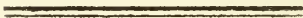
which would have accrued due in respect of the £6666 stock in case same had not been sold out; the testator's shares in a theatre directed to be sold, and the monies to arise therefrom to be paid into the bank;

the Receivers directed to be continued and to pass their accounts;

Costs of all parties to be taxed as between solicitor and client; Master to be at liberty to make separate reports; directions given out of what funds the costs are to be paid.

amount of the costs charges and expenses found by the said Master's report of the 6th day of December 1824 to have been incurred by the said plaintiff G. G., be paid in manner following, viz. &c. &c.

And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this court in that case made and provided; And any of the parties are to be at liberty to apply to this court as there shall be occasion.





## APPENDIX.

## ORDERS IN CHANCERY.

## COURT OF CHANCERY,

*3d April, 1828.*

**T**HE Right Honourable JOHN Lord LYNDHURST, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Sir JOHN LEACH, Master of the Rolls, and the Right Honourable Sir LANCELOT SHADWELL, Vice-Chancellor of England, doth hereby order and direct in manner following; that is to say:

## I.

THAT every plaintiff, as well in a country cause as in a town cause, shall be at liberty, without affidavit, to obtain an order for a subpoena returnable immediately; but such subpoena in a country cause is to be without prejudice to the defendant's right to eight days time to enter his appearance after he has been served with the subpoena.

Plaintiff in a country cause to be at liberty without affidavit, to sue out a subpoena returnable immediately.

## II.

THAT a writ of subpoena to appear, or to appear and answer, shall be sued out for each defendant, except in the case of husband and wife defendants; and that the costs of all such writs shall be costs in the cause.

Subpoena to be sued out for each defendant, except for husband and wife defendants.

## III.

Defendant in a country cause must answer within 8 days, or obtain the usual orders for time.

THAT a defendant in a country cause shall no longer be permitted to crave the common *dedimus*, but shall either put in his answer within eight days after his appearance, or shall obtain the usual orders for time.

## IV.

Exceptions to an answer to be delivered within 2 months;

Orders to deliver exceptions *nunc pro tunc* not to be allowed.

THAT in all cases, whether the defendant's answer be filed in term time or in vacation, the plaintiff shall be allowed two months to deliver exceptions to such answer; but if the exceptions be not delivered within the two months, the answer shall thenceforth be deemed sufficient, and the plaintiff shall have no order to deliver exceptions *nunc pro tunc*.

## V.

Where exceptions are not submitted to, plaintiff at the end of 8 days after delivery thereof and within the next 6 days, but not before, unless in injunction causes, to refer the answer; otherwise the answer to be deemed sufficient.

THAT when exceptions taken to an answer for insufficiency are not submitted to, the plaintiff may at the expiration of eight days after the exceptions are delivered, but not before, unless in injunction causes, refer such answer for insufficiency; and if he do not refer the same within the next six days he shall be considered as having abandoned the exceptions; in which latter case such answer shall be thenceforth deemed sufficient.

## VI.

A further answer to be referred for insufficiency within 14 days;

THAT if the plaintiff do not within a fortnight after a defendant's second or third answer is filed, refer the same for insufficiency on the old exceptions, such answer shall thenceforth be deemed sufficient.

## VII.

THAT if the plaintiffs do refer a defendant's second or third answer for insufficiency on the old exceptions, then the particular exception or exceptions to which he requires a further answer shall be stated in the order.

And the particular exceptions to be stated in the order.

## VIII.

THAT if upon a reference of exceptions the Master shall find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his report, from the date whereof such time shall run, and it shall not be necessary for the plaintiff to serve a subpoena for the defendant to make a better answer; and any defendant who shall not put in a further answer within the time so allowed, shall be in contempt, and be dealt with accordingly.

The Master to fix the time for putting in a further answer;

No subpoena to make a better answer to be required;

And in default of compliance defendant to be in contempt.

## IX.

THAT if upon a reference of exceptions the answer be certified sufficient, it shall be deemed to be so from the date of the Master's report; and if the defendant submit to answer without a report from the Master, the answer shall be deemed insufficient from the date of the submission.

Answer, when certified sufficient, to be deemed so from date of report; And if defendant submit to answer without a report, then, to be held insufficient from date of submission.

*Vide No. XII.*

## X.

THAT upon a third answer being reported insufficient, the defendant shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until such defendant shall have perfectly answered such interrogatories, and shall pay in addition to the £4 costs heretofore paid, such further costs as the Court shall think fit to award.

After a third insufficient answer defendant to be examined upon interrogatories and stand committed, and to pay such costs as the Court shall direct.

## XI.

Exceptions for scandal or impertinence to be signed by counsel, and to state the particular passages, the order of reference to be obtained within 6 days.

THAT no order shall be made for referring any pleading or other matter depending before the Court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent, nor unless such order be obtained within six days after the delivery of such exceptions.

## XII.

Order for referring answer for insufficiency, or answer or other matter for scandal or impertinence, to be considered as abandoned, unless the Master's report, or his certificate requiring further time, is obtained within a fortnight, and then also if the report be not obtained within such further time ;  
Answer to be deemed sufficient from the time when the order is to be considered as abandoned.

THAT when any order is made for referring an answer for insufficiency, or for referring an answer or other pleading or matter depending before the Court for scandal or impertinence, the order shall be considered as abandoned unless the party obtaining the order shall procure the Master's report within a fortnight from the date of such order, or unless the Master shall within the fortnight certify that a further time, to be stated in his certificate, is necessary in order to enable him to make a satisfactory report, in which case the order shall be considered as abandoned if the report be not obtained within the further time so stated ; and where such order relates to alleged insufficiency in an answer, such answer shall be deemed sufficient from the time when the order is to be considered as abandoned.

## XIII.

One order before replication for leave to amend to be obtained as of course, but no further order unless upon motion supported by affidavit;—

THAT the plaintiff shall be at liberty before filing a replication to obtain, upon motion or petition without notice, one order for leave to amend the bill ; but no further leave to amend shall be granted before replication, unless the Court shall be satisfied by affidavit that the draft of the intended amendments has been settled approved and signed by counsel, and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the plaintiff ; such affidavit to be made by the plaintiff, or one of the plaintiffs

by whom the affidavit is to be made ;

where there is more than one, or his her or their solicitor, or by such solicitor alone in case the plaintiff or plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no order to amend shall be made before replication, either without notice or upon affidavit, in manner hereinbefore mentioned, unless such order be obtained within six weeks after the answer if there be only one defendant, or after the last of the answers if there be two or more defendants, is to be deemed sufficient.

In any instance an order to amend to be obtained within 6 weeks after the time when the answer, or the last of the answers, is to be deemed sufficient.

## XIV.

THAT every order for leave to amend the bill shall contain an undertaking by the plaintiff to amend the bill within three weeks from the date of the order; and in default thereof, such order shall become void, and the cause shall, as far as relates to any motion to dismiss the bill for want of prosecution, stand in the same situation as if such order had not been made.

Every order to amend to contain an undertaking to amend within 3 weeks.  
Vide No. XIX.

## XV.

THAT after a replication has been filed, the plaintiff shall not be permitted to withdraw it and to amend the bill without a special order of the Court for that purpose, made upon a motion of which notice has been given; the Court being satisfied by affidavit that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the bill.

After replication, no amendment to be made without special order.

## XVI.

THAT where the answer of a defendant is to be deemed sufficient, whether it be in term time or in vacation, if the plaintiff or plaintiffs shall not proceed in the cause, the defendant shall be at liberty to move at the first seal after the following Term, upon notice, that the bill be dismissed with costs for want of prosecution; and the bill shall accordingly be dismissed with costs, unless the plaintiff or plaintiffs shall forthwith file a re-

If no proceeding had in the cause after answer filed, defendant to be at liberty after the following Term to move, upon notice, to dismiss bill;

upon what terms the bill to be retained;

in what case the court may allow the plaintiff further time for proceeding in the cause.

plication, and appear upon such motion, and give an undertaking to speed the cause with effect in the usual form; or, without filing a replication, shall appear upon such motion, and give an undertaking to hear the cause, as against the defendant making the motion, upon bill and answer; or unless it shall appear that the plaintiff or plaintiffs is or are unable to proceed in the cause by reason of any other defendant or defendants not having sufficiently answered the bill, and that due diligence has been used to obtain a sufficient answer or answers from such other defendant or defendants, in which case the Court shall allow to the plaintiff or plaintiffs such further time for proceeding in the cause as shall appear to the Court to be reasonable.

## XVII.

If replication filed before notice of motion to dismiss, plaintiff to serve subpoena to rejoin and obtain an order for a commission within one week;

within what time commission to be returnable;

within what time rules to be given to produce witnesses and pass publication;

for any default, the bill upon application of the defendant to stand dismissed with costs.

THAT where the plaintiff files a replication without having been served with a notice of any motion to dismiss the bill for want of prosecution, the plaintiff shall serve the subpoena to rejoin and obtain his order for a commission within one week from the filing of the replication; and if such order be obtained in Term time, then such commission shall be at the latest returnable on the first return of the following Term; and if such order be obtained in the Vacation, then such commission shall be returnable at the latest on the last return of the following Term; and where such commission is returnable on or before the first return of the following Term, there the plaintiff shall give his rules to produce witnesses and pass publication in that Term, and shall set down his cause to be heard in the following Term; and where such commission is returnable on or before the last day of the following Term, there the plaintiff shall give his rules to produce witnesses and pass publication in the next Term, and shall set down his cause to be heard in the third Term; and if the plaintiff shall make any default herein, then upon application by the defendant upon motion or petition without notice, the plaintiff's bill shall stand dismissed out of Court with costs.

XVIII.

THAT publication shall not be enlarged except upon special application to the Court, supported by affidavit, and at the cost of the party applying, unless otherwise ordered by the Court.

Publication not to be enlarged except upon special application.

XIX.

THAT whenever the time allowed for any of the following purposes, that is to say, for amending any bill, for filing, delivering and referring exceptions to any answer, or for obtaining a Master's report upon any exceptions, would expire in the interval between the last seal after Trinity Term and the first seal before Michaelmas Term, or between the last seal after Michaelmas Term and the first seal before Hilary Term, such time shall extend to and include the day of the general Seal then next ensuing.

Extension of time to the ensuing seal as to amendments, exceptions to answers, and reports upon exceptions, when the regular time expires in the long vacation, or the Christmas vacation.

XX.

THAT service on the Clerk in Court of any subpoena to rejoin, or to answer an amended bill, or to hear judgment, shall be deemed good service.

Service of subpoena in particular cases on Clerk in Court good service.

XXI.

THAT the order nisi for confirming a report may be obtained upon petition as well as by motion, and that service thereof upon the Clerk in Court of any party shall be deemed good service upon such party.

That an order nisi may be obtained on petition, and served on Clerk in Court.

XXII.

THAT every notice of motion, and every petition notice of which is necessary, shall be served at least two clear days before the hearing of such motion or petition.

Every notice of motion or petition to be served 2 clear days before the hearing.

## XXIII.

That the order *nisi* for dissolving the common injunction may be obtained upon petition, and to be served 2 clear days before the time for showing cause.

THAT the order *nisi* for dissolving the common injunction may be obtained upon petition as well as by motion, and that every such order be served two clear days at least before the day upon which cause is to be shown against dissolving the injunction.

## XXIV.

Plaintiff accepting costs from defendant in contempt, not to be compelled in case of an insufficient answer to re-commence the process of contempt.

THAT when a defendant in contempt for want of answer, obtains upon filing his answer the common order to be discharged as to his contempt on payment or tender of the costs thereof, the plaintiff shall not, by accepting such costs, be compelled in the event of the answer being insufficient, to re-commence the process of contempt against the defendant, but shall be at liberty to take up the process at the point to which he had before proceeded.

## XXV.

Witnesses not to be produced at the seat of the Clerk in Court for the adverse party;

THAT no witness to be examined before either of the Examiners for any party in a cause be in future produced at the seat of the Clerk in Court for the opposite party; but that a notice in writing containing the name and description of the witness be served there as heretofore.

## XXVI.

May be examined and cross-examined by the same Examiner.

THAT the Examiner who shall take the examination in chief of any witness shall be at liberty to take his cross-examination also.

## XXVII.

Master may disallow the costs of separate answers or other proceedings where the same solicitor is

THAT where the same solicitor is employed for two or more defendants, and separate answers shall have been filed, or other proceedings had by or for two or more defendants se-



parately, the Master shall consider in the taxation of such solicitor's bill of costs either between party and party or between solicitor and client, whether such separate answers or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

employed for two or more defendants, if in his opinion unnecessary or improper.

## XXVIII.

THAT where a plaintiff obtains a decree with costs, there the costs occasioned to the plaintiff by the insufficiency of the answer of any defendant shall be deemed to be part of the plaintiff's costs in the cause, such sum or sums being deducted therefrom as were paid by the defendant according to the course of the Court, upon the exceptions to the said answer being submitted to or allowed.

Plaintiff obtaining a decree with costs, to be allowed his costs occasioned by an insufficient answer.

## XXIX.

THAT where the plaintiff is directed to pay to the defendant the costs of the suit, there the costs occasioned to a defendant by any amendment of the bill shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which may have been made by special leave of the Court, or which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum or sums which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

Defendant receiving the costs of the suit to be allowed his costs occasioned by amending the bill, except in certain cases.

## XXX.

THAT when upon taxation a plaintiff who has obtained a decree with costs is not allowed the costs of any amendment of the bill, upon the ground of its having been unnecessarily made, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Where plaintiff obtaining a decree with costs is not allowed the costs of amending the bill, defendant's costs occasioned by such amendment to be deducted from the costs to be paid.

Upon allowance of a plea or demurrer, the plaintiff to pay the taxed costs thereof, and if to the whole bill, the further taxed costs of the suit; unless in the case of a *plea*, plaintiff undertakes to reply.

XXXI.  
 THAT upon the allowance of any plea or demurrer, the plaintiff or plaintiffs shall pay to the defendant or defendants the taxed costs thereof; and when such plea or demurrer is to the whole bill, then the further taxed costs of the suit also; unless in the case of a plea the plaintiff or plaintiffs shall undertake to reply thereto, and then the costs shall be reserved, or unless the Court shall think fit to make other order to the contrary.

Upon over-ruling a plea or demurrer, defendant to pay the taxed costs occasioned thereby, unless otherwise ordered.

XXXII.  
 THAT upon the over-ruling of any plea or demurrer, the defendant or defendants shall pay to the plaintiff or plaintiffs the taxed costs occasioned thereby, unless the Court shall make other order to the contrary.

Where two Counsel are proper, the costs occasioned thereby to be allowed, although both be of the Outer Bar.

XXXIII.  
 THAT when two Counsel appear for the same party or parties upon the hearing of any cause or matter, and it shall appear to the Master to have been necessary or proper for such party or parties to retain two Counsel to appear, the costs occasioned thereby shall be allowed, although both of such Counsel may have been selected from the Outer Bar.

Where a cause standing for hearing is struck out of the paper, owing to a defect on the part of the plaintiff, defendant to be allowed the costs of the first setting down.

XXXIV.  
 THAT when a cause which stands for hearing is called on to be heard, but cannot be decided by reason of a want of parties or other defect on the part of the plaintiff, and is therefore struck out of the paper, if the same cause is again set down, the defendant or defendants shall be allowed the taxed costs occasioned by the first setting down, although he or they do not obtain the costs of the suit.

## XXXV.

THAT where a cause being in the paper for hearing is ordered to be adjourned upon payment of the costs of the day, there the party to pay the same, whether before the Lord High Chancellor, the Master of the Rolls, or the Vice-Chancellor, shall pay the sum of £10, unless the Court shall make other order to the contrary.

Where a cause is ordered to be adjourned upon payment of the costs of the day, the party shall pay £10, unless otherwise ordered.

## XXXVI.

THAT whenever upon the hearing of any cause or other matter it shall appear that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court, and which according to its practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court shall think fit to award.

Where a cause cannot proceed by reason of the non-attendance of a solicitor or some person on his behalf, or his having neglected to deliver any paper necessary for the use of the Court, he is to pay personally such costs as the Court shall think fit.

## XXXVII.

THAT the Sworn Clerks of the Court and the Waiting Clerks shall not be entitled to receive any fees for attendance in Court, except in cases where they shall actually attend, and where their attendance shall be necessary.

Sworn Clerks and Waiting Clerks only entitled to fees on actual attendance, and where the same is necessary.

## XXXVIII.

THAT where any cause which is set down to be heard either in the Court of the Lord Chancellor, or in the Court of the Master of the Rolls, shall be afterwards set down to be heard in the other of the said two Courts, there the solicitor for the plaintiff shall certify the fact to the Registrar of the Court where the cause was first set down, who shall cause

Where a cause set down to be heard in one Court is afterwards set down to be heard in the other Court, the plaintiff's solicitor to certify the fact to the Registrar of the Court where it was first set down.

an entry thereof to be made in his book of causes, opposite to the name of such cause; and the solicitor for the plaintiff shall be allowed a fee of six shillings and eight pence for so certifying the fact, if he shall certify the same within eight days after the said cause is so set down a second time.

## XXXIX.

Where a cause becomes abated, or is compromised after it is set down to be heard, the plaintiff's solicitor to certify the fact to the Registrar.

THAT where any cause shall become abated, or shall be compromised after the same is set down to be heard in either of the said two Courts, the solicitor for the plaintiff shall also certify the fact, as the case may be, to the Registrar of the Court where the cause is so set down, who shall in like manner cause an entry thereof to be made in his cause book, and the solicitor for the plaintiff shall be allowed the same fee of six shillings and eight pence for such certificate, if he shall certify the fact as soon as the same shall come to his knowledge.

## XL.

Penalty in bond given to answer costs, by plaintiff, increased from £40 to £100.

THAT the penal sum in the bond to be given as a security to answer costs by any plaintiff who is out of the jurisdiction of the Court, be increased from forty pounds to one hundred pounds.

## XLI.

Deposit upon exceptions to a report to be increased to £10; in case the exceptions are over-ruled, the exceptant to pay the further taxed costs, unless otherwise ordered.

THAT the deposit upon exceptions to a Master's report shall be increased to £10, to be paid to the adverse party if the exceptions are over-ruled, in which case the exceptant shall also pay the further taxed costs occasioned by such exceptions, unless the Court shall otherwise order; but in case the exceptant shall in part succeed, the deposit shall be dealt with and costs shall be paid as the Court shall direct.

## XLII.

THAT the deposit upon every petition of appeal or re-hearing be increased to £20, to be paid to the adverse party when the decree or order appealed from is not varied in any material point, together with the further taxed costs occasioned by the appeal or re-hearing, unless the court shall otherwise order.

Deposit upon a petition of appeal or re-hearing increased to £20, to be paid over with further costs, when the decree or order is not varied in any material point.

## XLIII.

THAT for the purpose of enabling all persons to obtain precise information as to the state of any cause, and to take the means of preventing improper delay in the progress thereof, any Clerk in Court shall at the request of any person, whether a party or not in the suit or matter inquired after, procure and furnish a certificate from the Six Clerks' Office, specifying therein the dates and general description of the several proceedings which have been taken in any cause in the said office, whether such Clerk in Court be or not concerned as Clerk in Court in the cause, and that he shall be entitled to receive the sum of three shillings and four pence for such certificate, and no more.

Any Clerk in Court at the request of any person, to procure a certificate specifying the dates and general description of the several proceedings in any cause.

## XLIV.

THAT whenever a person who is not a party appears in any proceeding either before the Court or before the Master, service upon the solicitor in London by whom such party appears, whether such solicitor act as principal or agent, shall be deemed good service, except in matters of contempt requiring personal service.

Service on the solicitor in London, of a person, not a party, appearing in any proceeding, to be deemed good service, except in matters of contempt.

## XLV.

Clerical and accidental errors to be corrected upon petition before enrolment.

THAT clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may at any time before enrolment be corrected upon petition, without the form and expense of a re-hearing.

## XLVI.

Application to stay proceedings upon a decree or order to be made to the Judge who pronounced it.

THAT every application to stay proceedings upon any decree or order which is appealed from, be made first to the Judge who pronounced the decree or order.

## XLVII.

Application for a new trial to be made to the Judge who directed the issue.

THAT every application for the new trial of any issue at law directed by a Judge of this Court, be first made to the Judge who directed such issue.

## XLVIII.

If a decree or order referring any matter to a Master is not brought into the Master's office within 2 months, any party interested to be at liberty to apply to the Court.

THAT where any decree or order referring any matter, to a Master is not brought into the Master's office within two months after the same decree or order is pronounced, there any party to the cause, or any other party interested in the matter of the reference, shall be at liberty to apply to the Court by motion or petition, as he may be advised, for the purpose of expediting the prosecution of the said decree or order.

## XLIX.

The Master to keep a register of the dates and descriptions of the proceedings in every cause or matter referred to him.

THAT every Master shall enter in a book to be kept by him for that purpose, the name or title of every cause or matter referred to him, and the time when the decree or

order is brought into his office, and the date and description of every subsequent step taken before him in the same cause or matter, and the attendance or non-attendance of the several parties on each of such steps, so that such book may exhibit at one view the whole course of proceeding which is had before him in each particular cause and matter.

## L.

THAT upon the bringing in of every decree or order, the solicitor bringing in the same shall take out a warrant appointing a time which is to be settled by the Master, for the purpose of the Master taking into consideration the matter of the said decree or order, and shall serve the same upon the Clerks in Court of the respective parties, or upon the parties or their solicitors in cases where they shall have no Clerks in Court.

The solicitor bringing in a decree or order, to take out a warrant appointing a time to be settled by the Master for taking into consideration the matter of the decree or order; upon whom such warrant to be served.

## LI.

THAT at the time so appointed for considering the matter of the said decree or order, the Master shall proceed to regulate, as far as may be, the manner of its execution; as for example, to state what parties are entitled to attend future proceedings, to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters requiring evidence shall be proved by affidavit or by examination of witnesses, and in the latter case, if necessary, to issue his certificate for a commission; and if the Master shall think it expedient so to do, he shall then fix a certain time or certain times within which the parties are to take any certain proceeding or proceedings before him.

At the time appointed, the Master to regulate and direct the manner of the execution of the decree or order, and the proceedings to be taken,

and the Master to be at liberty to fix a time within which parties are to take any proceeding;

## LII.

On any subsequent attendance, the Master to be at liberty to fix a time within which parties are to take any other proceedings.

THAT upon any subsequent attendance before him in the same cause or matter, the Master, if he thinks it expedient so to do, shall fix a certain time or certain times within which the parties are to take any other proceeding or proceedings before him.

## LIII.

Upon default of any party's attendance, the Master may proceed *ex parte*.

THAT where some or one but not all the parties do attend the Master at an appointed time, whether the same is fixed by the Master personally or upon a warrant, there the Master shall be at liberty to proceed *ex parte* if he thinks it expedient, considering the nature of the case, so to do.

## LIV.

Where the Master has proceeded *ex parte*, such proceeding not to be reviewed unless he is satisfied that there was no wilful delay or neglect, and then only upon payment of costs.

THAT where the Master has proceeded *ex parte*, such proceeding shall not in any manner be reviewed in the Master's office, unless the Master, upon a special application made to him for that purpose by a party who was absent, shall be satisfied that he was not guilty of wilful delay or negligence, and then only upon payment of all costs occasioned by his non-attendance; such costs to be certified by the Master at the time, and paid by the party or his solicitor before he shall be permitted to proceed on the warrant to review.

## LV.

Where a proceeding fails by reason of non-attendance, the Master may certify the amount of costs to be paid by the absent party, his solicitor, or clerk in court, and

THAT where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, there the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending by the



absent party or parties, or by his or their solicitor or solicitors, or Clerk or Clerks in Court, personally, as the Master in his discretion shall think fit; and upon motion or petition, without notice, the Court will make order for the payment of such costs accordingly.

an order for payment to be made as of course.

## LVI.

THAT where the party actually prosecuting a decree or order does not proceed before the Master with due diligence, there the Master shall be at liberty, upon the application of any other party interested either as a party to the suit, or as one who has come in and established his claim before the Master under the decree or order, to commit to him the prosecution of the said decree or order; and from thenceforth, neither the party making default, nor his solicitor, shall be at liberty to attend the Master as the prosecutor of the said decree or order.

Where a party prosecuting a decree or order does not proceed with due diligence, the Master may commit the prosecution thereof to any other party interested applying to him.

## LVII.

THAT upon any application made by any person to the Court, the Master, if required by the person making the application, shall, in as short a manner as he conveniently can, certify to the Court the several proceedings which shall have been had in his office in the same cause or matter, and the dates thereof.

Upon any application to the court, the Master to certify, if required, the proceedings had in his office.

## LVIII.

THAT every Master shall be at liberty, without order, to proceed in all matters *de die in diem* at his discretion.

The Master may proceed *de die in diem* without order.

## LIX.

THAT every warrant for attendance before the Master shall be considered as peremptory, and the Master shall be at liberty to continue the attendance beyond the hour and

Every warrant for attendance to be considered peremptory; the Master to regulate the time of, and fees for, attendance.

In case of a solicitor's non-attendance, his usual fee to be disallowed.

during such time as he thinks proper, and shall be empowered to increase the fee for the solicitor's attendance in proportion to the time actually occupied; and in case the Master shall not be attended by the solicitor, or a competent person on the behalf of the solicitor, of any party, the Master shall in such case disallow the usual fee for the solicitor's attendance, taking care either in allowing an increased fee, or disallowing the usual fee, to mark his determination in his Attendance Book, and also on the warrant for attendance.

### LX.

The production or inspection of books, papers, &c. to be in the discretion of the Master.

THAT where by any decree or order of the Court, books, papers, or writings are directed to be produced before the Master for the purposes of such decree or order, it shall be in the discretion of the Master to determine what books papers or writings are to be produced, and when and for how long they are to be left in his office; or in case he shall not deem it necessary that such books, papers, or writings should be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he shall deem expedient.

### LXI.

Parties to bring in their accounts in the form of debtor and creditor, and to be examined upon interrogatories as the Master shall direct.

THAT all parties accounting before the Masters shall bring in their accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party upon interrogatories as the Master shall direct.

### LXII.

All accounts, when passed and settled, to be entered in a book with proper indexes.

THAT all such accounts when passed and settled by the Master shall be entered in a book to be kept for that purpose in the Master's Office, as is now the practice with respect to Receivers' accounts, and with proper indexes, in order to be referred to as occasion may require.

## LXIII.

THAT the Master in acting upon the Order of the Court of 23d April 1796, shall be at liberty upon the appointment of a receiver, or at any time subsequent thereto, in the place of annual periods for the delivery of the receiver's accounts and payment of his balances, to fix either longer or shorter periods at his discretion; and when such other periods are fixed by the Master, the regulations and principles of the said Order shall in all other respects be applied to the said receiver.

The Master to be at liberty to fix any periods for delivery of receivers' accounts and payment of balances in their hands.

## LXIV.

THAT in every Order directing the appointment of a receiver of a landed estate, there be inserted a direction that such receiver shall manage, as well as set and let, with the approbation of the Master; and that in acting under such an Order it shall not be necessary that a petition be presented to the Court in the first instance, but the Master, without special Order, shall receive any proposal for the management or letting of the estates from the parties interested, and shall make his report thereon, which report shall be submitted to the Court for confirmation in the same manner as is now done with respect to reports on such matters made upon special reference; and until such report be confirmed, it shall not give any authority to the receiver.

On the appointment of a receiver of a landed estate, a direction to be inserted in the order authorizing him to manage as well as let the same; the Master, without special order, to receive proposals for managing or letting the estate, and until the Master's report be confirmed, the receiver to have no authority under the same.

## LXV.

THAT all affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Master.

As to what affidavits may be used before a Master.

## LXVI.

As to what further affidavits may be used before a Master in reply to former affidavits.

THAT where upon an inquiry before the Master affidavits are received, there no affidavit in reply shall be read, except as to new matter which may be stated in the affidavits in answer, nor shall any further affidavits be read unless specially required by the Master.

## LXVII.

After issuing the warrant on preparing his report, no further evidence to be received by the Master.

THAT the Master shall not receive further evidence as to any matter depending before him after issuing the warrant on preparing his report; but that he shall not issue such warrant without previously requiring the parties to show cause why such warrant should not issue.

## LXVIII.

No warrant to review any proceeding to be taken out, except by permission of the Master, the costs of such review to be in his discretion.

THAT no warrant to review any proceeding in the Master's Office shall be allowed to be taken out, except by permission of the Master, upon special grounds to be shown to him for that purpose; and the costs of such review when allowed shall be in the discretion of the Master, and shall be paid by and to such persons and at such time as he shall direct.

## LXIX.

The Master to have power at his discretion to examine witnesses *vivâ voce*, subpoena to issue to compel their attendance, and the evidence to be preserved in the Master's Office.

THAT the Master shall have power at his discretion to examine any witness *vivâ voce*, and in such case the subpoena for the attendance of the witness shall, upon a note from the Master, be issued from the Subpœna Office; and that the evidence upon such *vivâ voce* examination shall be taken down by the Master, or by the Master's clerk in his presence, and preserved in the Master's Office, in order that the same may be used by the Court, if necessary.

## LXX.

THAT in all matters referred to him, the Master shall be at liberty upon the application of any party interested, to make a separate report or reports from time to time as to him shall seem expedient; the costs of such separate reports to be in the discretion of the Court.

The Master to be at liberty to make separate reports as he may think expedient.

## LXXI.

THAT where a Master shall make a separate report of debts or legacies, there the Master shall be at liberty to make such certificate as he thinks fit with respect to the state of the assets; and every person interested shall thereupon be at liberty to apply to the Court as he shall be advised.

Upon a separate report of debts or legacies, the Master may certify with respect to the state of the assets.

## LXXII.

THAT the Master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *vivâ voce*, or in both modes, as the nature of the case may appear to him to require, the evidence upon such examination being taken down at the time by the Master or by the Master's clerk in his presence, and preserved, in order that the same may be used by the Court if necessary.

The Master to be at liberty to examine a creditor or other person claiming, either upon interrogatories or *vivâ voce*.

## LXXIII.

THAT if any party wishes to complain of any matter introduced into any state of facts, affidavit or other proceeding before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's office is insufficient, he shall be at liberty, without any order of reference by the Court, to take out a warrant for the Master to examine such matter, and the Master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent.

Any party complaining of scandal or impertinence in any proceedings before a Master, to be at liberty, without order of reference, to take out a warrant for the Master to examine such matter, power given to the Master to expunge the same.

## LXXIV.

The relevancy or materiality of statements or questions to be considered by the Master.

THAT the Master in deciding on the sufficiency or insufficiency of any answer or examination, shall take into consideration the relevancy or materiality of the statement or question referred to.

## LXXV.

Property directed to be sold before the Master, may be sold in the country as the Master shall think fit.

THAT in cases where estates or other property are directed to be sold before the Master, the Master shall be at liberty, if he shall think it for the benefit of the parties interested, to order the same to be sold in the country at such place and by such person as he shall think fit.

## LXXVI.

Directions as to the course of proceeding where a Master is directed to settle a conveyance, or to tax costs, in case the parties differ about the same.

THAT where a Master is directed to settle a conveyance, or to tax costs, in case the parties differ about the same, there the party claiming the costs, or entitled to prepare the conveyance, shall bring the bill of costs or the draft of the conveyance into the Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice, such other party shall have liberty to inspect the same without fee, and may take a copy thereof if he thinks fit; and at or before the expiration of the eight days, or such further time as the Master shall in his discretion allow, he shall then either agree to pay the costs or adopt the conveyance, as the case may be, or signify his intention to dispute the same; and in case he dispute the same, the Master shall then proceed to tax the costs, or settle the conveyance, according to the practice of the Court.

## LXXVII.

The Master may require parties to be represented before him by distinct solicitors.

THAT whenever in any proceeding before a Master the same solicitor is employed for two or more parties, such Master may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and may refuse to proceed until such party is so represented.

## LXXVIII.

THAT such of the foregoing Orders as limit or allow any specified time for any party to take any proceeding, or for any other purpose, shall only apply to cases where the period from which such specified time is to be computed shall be on or subsequent to the first day of Easter Term now next ensuing.

*Directions as to the time from which the preceding Orders should take effect.*

## LXXIX.

THAT such of the foregoing Orders as relate to the manner in which the costs of any suit or proceeding are to be taxed, and to the amount of costs to be paid on any occasion, shall not apply to any costs which shall have been incurred, or to the costs of any proceeding which shall have been had or taken previously to the first day of Easter Term next ensuing.

## LXXX.

THAT such of the foregoing Orders as relate to the course of proceeding in the offices of the Masters of the Court, or to the authority of the Masters, shall have effect from and after the first day of Easter Term next ensuing, and shall be acted upon by the Masters in all cases except where from the then advanced stage of any proceeding they are not practically applicable.

## LXXXI.

THAT subject to the regulations hereinbefore specified, the foregoing Orders shall take effect as to all suits whether now depending or hereafter commenced, on the first day of Easter Term next.

LYNDHURST, C.  
JOHN LEACH, M. R.  
LANCELOT SHADWELL, V. C.





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TO THE

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## ERRATA.

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### VOL. I.

PAGE

- Table of Contents, Chapter V. line 6, from the bottom, for "in nature of a review," read "in nature of a bill of review."  
9, last line but one, after "Sim. & Stu." add "p. 543."  
16, l. 27, for "some or what," read "some and what."  
32, l. 8, from the bottom, for "declared," read "decreed."  
155, l. 21, for "bills," read "bill."  
235, l. 19, for "bill," read "will,"  
240, l. 5, for "this," read "his."  
271, l. 31, for "childre," read "children."  
297, add an asterisk to Form, No. LXXX.  
315, l. 16, for "estates," read "estate."  
338, l. 5, for "binding the plaintiffs," read "binding upon the plaintiffs."  
453, l. 4, for "name," read "names."  
663, l. 8, from the bottom, for "negno," read "regno."

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### VOL. II.

- 13, l. 6, for "in value," read "in the value."  
323, in the margin, l. 9, from the bottom, *dele* "that."  
381, l. 2, for "eldest son," read "eldest surviving son."

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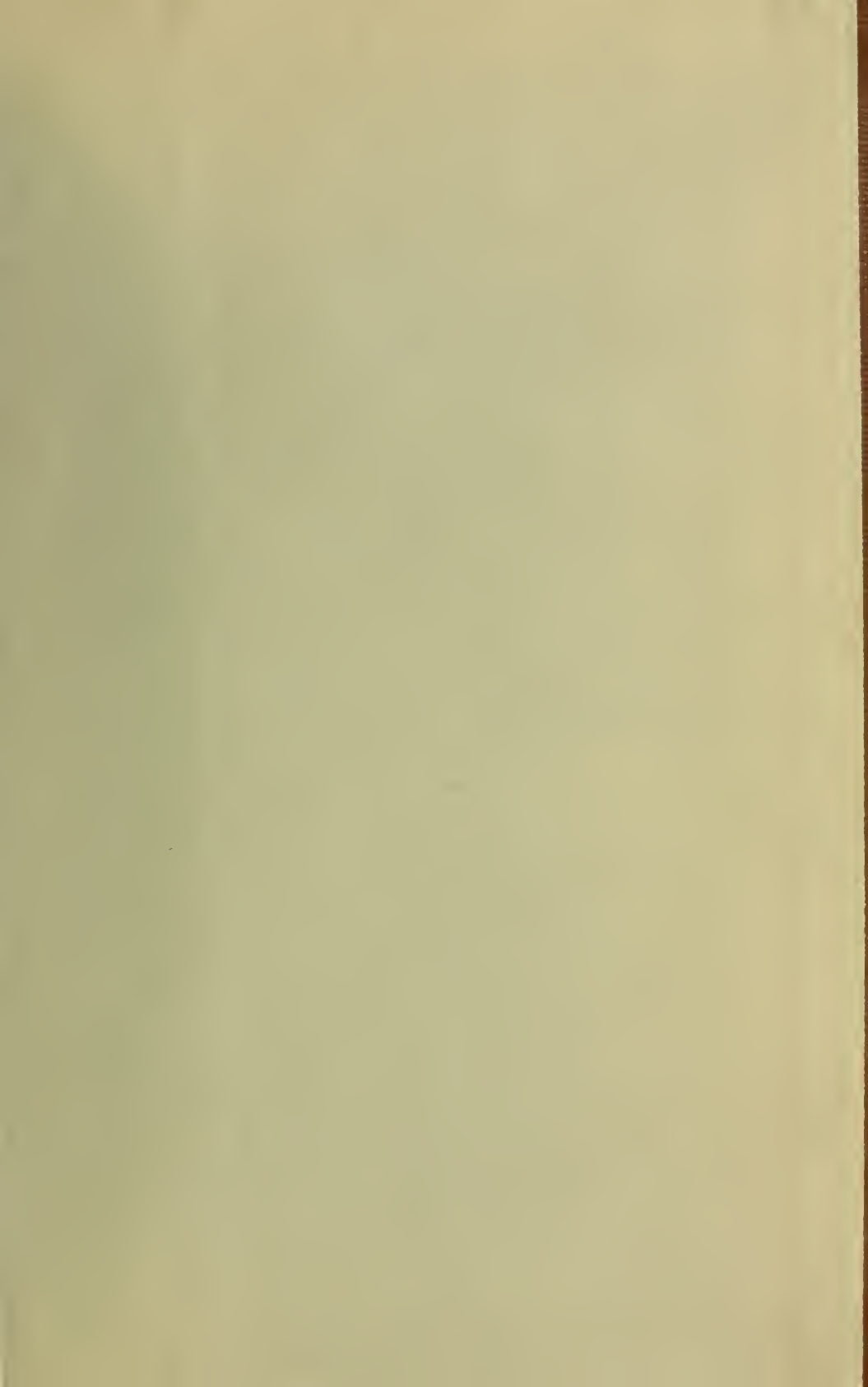
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